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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 22

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS,

vs.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED MARCH 1, 19[illegible].

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 12, 1940.

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 201. June Term, 1939

BERNARD DAVIDOWITZ, a Resident, Citizen and Taxpayer of and to the Commonwealth of Pennsylvania, and VINCENZO TRAVAGLINI, a Resident and Taxpayer of and to the Commonwealth of Pennsylvania, for Themselves, and on Behalf of Any and All Other Residents, Citizens and/or Taxpayers, as May Wish to Join Them as Party Plaintiffs,

vs.

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, LYNN G. ADAMS, Commissioner of Pennsylvania State Motor Police, WILLIAM J. HAMILTON, JR., Secretary of Revenue of the Commonwealth of Pennsylvania, WARREN R. ROBERTS, Auditor General of the Commonwealth of Pennsylvania, and F. CLAIR ROSS, State Treasurer of the Commonwealth of Pennsylvania

DOCKET ENTRIES

Jul. 7, 1939. Complaint.

Jul. 7, 1939. Summons issued returnable 20 days after service.

Jul. 7, 1939. Copies of complaint handed U. S. Marshal. 5.

Jul. 7, 1939. Præcipe for appearance of Ralph P. Needle, Esq., as associate counsel for plaintiffs.

Jul. 7, 1939. J. S. 5.

Jul. 12, 1939. Summons returned served also copies of complaint 7-10-39.

Jul. 12, 1939. Not served as to Warren B. Roberts & F. Clair Ross, by direction of Ralph P. Needle, Esq. (M. F. & E. $12.66).

Aug. 10, 1939. Answer of defendants.

Aug. 2, 1939. Motion for judgment on the pleadings and

Aug. 2, 1939. Order fixing hearing for Oct. 2, 1939 at 10 A. M. at Scranton, Pa. E. S. T. (W)

Sep. 29, 1939. Petition of Philadelphia Emergency Conference on alien legislation, et al., for leave to file a brief Amicus Curiae and

Sep. 29, 1939. Order granting leave to file a brief Amicus Curiae (W)

Oct. 21, 1939. Order dated Oct. 12, 1939, designating Hon. John Biggs, Jr., and Hon. Charles Alvin Jones, U. S. Circuit Judges, 3rd Cir., to assist me to hear and determine above named pending case. (W)

Nov. 12, 1939. Rebuttal brief filed by the associations allowed to file briefs as friends of the Court. (Copies mailed Judges direct.)

Nov. 30, 1939. Opinion: The control of aliens and the conditions of their habitation in the States of the United States must remain in the Federal Government. A perpetual injunction will issue against the defendants named, Officers of the Commonwealth of Pennsylvania, enjoining them from enforcing the Act.

Nov. 30, 1939. Notices of entry of opinion mailed to all counsel for defendants.

Nov. 30, 1939. Perpetual Injunction issued.

Nov. 30, 1939. Original and five copies of injunction mailed Ralph P. Needle, Esq.

Nov. 30, 1939. J. S. 6.

[fol. 2] Dec. 4, 1939. Copy of provisions of treaties of Commerce & Navigation, & letter from State Department.

Dec. 11, 1939. Perpetual Injunction returned with acceptance of service thereon, 12/4/39, for the various respondents.

Dec. 15, 1939. Order amending Perpetual Injunction by striking the word "further" where it first appears in said writ; by striking from the said writ the phrase "the further constructing or using, or"; and by striking therefrom the words "requiring registration to be made by aliens on or before the first day of January, 1940, and during the month of December, 1939. (W)

Dec. 15, 1939. Copies of order mailed Ralph P. Needle, Esq., also Claude T. Reno, Attorney General of Pa.

Dec. 29, 1939. Order, dated Dec. 28, 1939, amending printed Opinion filed by striking from note 3 appearing upon page 6 the semicolon, quotation mark and three periods before the word "that" as the same appear and the quotation mark after the word "statute" in said note; and by striking the numeral "2" from the second line of the second paragraph of page nine and substituting in lieu thereof the numeral "3"; and by striking the word "Judicial" from the eleventh line of the second paragraph of page

eleven of said printed opinion and inserting after the word "Code" the phrase "of the United States (8 USCA)". (Biggs.)

Dec. 29, 1939. Copies of order mailed Ralph P. Needle, Esq., also Claude T. Reno, Attorney General of Pa.

Feb. 7, 1940. Petition of defendants for an appeal of decree entered Nov. 30, 1939 and

Feb. 7, 1940. Assignment of errors.

Feb. 7, 1940. Statement as to jurisdiction of appeal.

Feb. 7, 1940. Præcipe for transcript of record on appeal.

Feb. 8, 1940. Order allowing appeal (W).

Feb. 16, 1940. Acceptance of service of Notice of Appeal.

Feb. 26, 1940. Copy of præcipe for transcript of record on appeal and

Feb. 26, 1940. Acceptance of service thereon and Appellees Waiver of the 10 days allowed to file additional requirements for record on appeal.

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT—Filed July 7, 1939

To the Honorable, the Judges of the said Court:

The plaintiffs above named, on behalf of themselves and on behalf of all other residents or citizens or taxpayers who may lawfully join herein, bring this civil class action against the defendants above named, and complain and allege, upon information and belief, as follows:

[fol. 4] I. Jurisdiction and Venue

1. This complaint is filed, these proceedings are instituted, and the jurisdiction of this Court exists and is invoked under and by virtue of the Judicial Code of March 3, 1911, Sec. 24, Par. 14, as amended by 36 Stat. 1092, entitled "Suits to Redress Deprivations of Civil Rights" (Title 28 U. S. Code Sec. 41).

2. The defendants against whom this action is filed, and the acts which this complaint seeks to enjoin, are all located in the Middle District of Pennsylvania. All of the defendants

hold office within the said district, although many of their acts will have effect, in part, outside the said district.

II. Description of Plaintiffs

3. Bernard Davidowitz is a resident of the City of Philadelphia, a citizen of the United States of America, and a taxpayer of and to the Commonwealth of Pennsylvania.

4. Vincenzo Travaglini, a resident of the City of Philadelphia, is an alien, born in Abruzzi, Italy, in 1893, having come to the United States of America in 1920, and resided in the City of Philadelphia since his arrival in the United States. He is not naturalized, nor has he filed a declaration of intention to become a citizen of the United States of America.

III. Description of Defendants

5. Lewis G. Hines is Secretary of Labor and Industry of the Commonwealth of Pennsylvania, and as such, is in charge of the Department of Labor and Industry, charged interalia with certain duties under said Act No. 304.

6. Lynn G. Adams is the Commissioner of the Pennsylvania State Motor Police, and interalia is charged under Act No. 304 of the 1939 Laws of the Commonwealth of Pennsylvania, more specifically referred to hereinafter, with certain administrative and executive duties.

[fol. 5] 7. William J. Hamilton, Jr., is the Secretary of Revenue of the Commonwealth of Pennsylvania, charged interalia with the issuance of motor vehicle operators' and owners' licenses, and with certain duties and prohibitions under said Act No. 304.

8. Warren R. Roberts is the Auditor General of the Commonwealth of Pennsylvania, and as such is authorized and empowered to approve or disapprove requisitions for the payment of money out of the State Treasury of the Commonwealth of Pennsylvania in accordance with valid appropriations made by the General Assembly of the said Commonwealth.

9. F. Clair Ross is the State Treasurer of the Commonwealth of Pennsylvania, and as such is authorized to approve or disapprove requisitions for payment of money out of the State Treasury of the Commonwealth of Pennsyl-

vania, and, when such requisitions have been approved by him and by the Auditor General of said Commonwealth, to make payments out of the State Treasury in accordance with warrants drawn upon such approved requisitions.

IV. Violations of Federal Constitution and Statutes upon Which Complaint Is Based

10. On June 21, 1939, Arthur H. James, Governor of the Commonwealth of Pennsylvania, approved an enactment of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An Act requiring certain aliens to register with the Department of Labor and Industry and to carry, and upon proper demand, to exhibit identification cards, prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties", being Act No. 304 of the 1939 Session of the General Assembly of Pennsylvania. A true and correct copy of said Act is attached hereto, and marked Exhibit "A".

11. Plaintiffs are advised by counsel, and therefore aver and complain that Act No. 304, of which Exhibit "A" is a copy, is null, void and of no effect:

[fol. 6] (a) Because it violates Article I, Section 8, Clause 3, of the Constitution of the United States of America, in that it trespasses on the exclusive Federal power to regulate interstate and foreign commerce, and the exclusive Federal power to regulate immigration and aliens;

(b) Because it violates Article VI, Clause 2, of the Constitution of the United States of America, which declares that the Constitution and Laws of the United States made in pursuance thereof shall be the supreme law of the land;

(c) Because it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it trespasses on the jurisdiction of the United States over aliens, and denies due process and equal protection of the law to all persons within the jurisdiction of the Commonwealth of Pennsylvania;

(d) Because in the exercise of its police power, the General Assembly of the Commonwealth of Pennsylvania cannot draw within its jurisdiction subject matter which has been vested exclusively in Congress by the Constitution;

(e) Because, in addition to the specific violations of the Constitution of the United States, the said Act also violates divers provisions of the Constitution of the Commonwealth of Pennsylvania, to wit:

1. Article 1, Section 1, which sets forth the natural rights of mankind in Pennsylvania;

2. Article 1, Section 8, which prohibits unreasonable searches and seizures;

3. Article 1, Section 17, which prohibits impairment of contracts;

4. Article 3, Section 3, in that the subject matter of the Act is not clearly set forth in its title.

[fol. 7] 5. Article 3, Sections 7 and 8, in that it violates the safeguards imposed with respect to special legislation;

6. Article 9, Section 1, in that it does not provide for uniformity of taxation.

V. Facts of Complaint

12. Plaintiffs are advised and informed by counsel and therefore aver that the aforesaid Act No. 304, more particularly set forth in Exhibit "A", is unconstitutional and void in that it violates the rights and privileges guaranteed unto your plaintiffs and other residents, citizens and taxpayers within Pennsylvania, by the Constitution of the United States of America and the Constitution of the Commonwealth of Pennsylvania, interalia, and not to the exclusion of other violations of their civil rights, as follows:

(a) Plaintiff, Bernard Davidowitz, is a naturalized citizen of the United States of America, is decidedly of foreign appearance, and speaks the English language with a strongly noticeable foreign accent; that notwithstanding the exemption granted to him under the provisions of the Act aforesaid, because of the abovementioned characteristics, he will nevertheless be subjected to constant questioning by enforcement officers to show that he is not an alien required to carry a registration card on his person. If the act is permitted to go into effect he will be unlawfully, unjustly, and to his constant embarrassment discriminated against, and will further be required to carry with him at all times the proof of his naturalization.

(b) Plaintiff, Vincenzo Travaglini, an alien residing in the City and County of Philadelphia, is directly affected by the provisions of Act No. 304 which violate and unlawfully invade the exclusive Federal power to regulate the terms and conditions under which aliens may live in any of the states by virtue of the Constitution of the United States of America, under which the right of the Federal Government therein is paramount and exclusive.

[fol. 8] (c) Plaintiff, Vincenzo Travaglini, further complains and therefore avers that the aforesaid Act No. 304 unjustly and unfairly discriminates against him because it denies to him equal protection under the laws of the Commonwealth of Pennsylvania guaranteed to him and all persons by the Fourteenth Amendment to the Constitution of the United States.

(d) Plaintiff, Vincenzo Travaglini, further complains that he and others similarly situated are discriminated against because Act No. 304 makes it mandatory on the Secretary of Revenue, one of the defendants herein, to refuse to issue a driver's or an owner's license to him unless he produces an alien registration card.

(e) Plaintiff, Vincenzo Travaglini, further complains and therefore avers that Act No. 304 is unconstitutional and void because it interferes with his right as a resident alien in the Commonwealth of Pennsylvania, to obtain employment requiring the use and operation of an automobile, wherein and whereby his is discriminated against, contrary to the laws of the United States of America.

13. Plaintiffs are further informed by counsel and therefore aver that Act No. 304 is unconstitutional and therefore void because notwithstanding that the United States Constitution gives the right to regulate and control immigration and aliens exclusively to the Congress, the provisions of Act No. 304 encroach thereon, in illegally attempting to regulate, control, regiment and classify aliens within the territorial limits of the Commonwealth of Pennsylvania.

14. Plaintiffs are advised by counsel and therefore aver that Section 1 of Act No. 304 exempts from registration "American Citizens", and those (aliens) announcing their intention to become "American Citizens". They respectfully aver that no such classification of citizenship is known

in the laws of the United States of America or in the Commonwealth of Pennsylvania, and that a classification ex-
[fol. 9] tending an exemption to citizens of any nation on the American Continent would be unfair discrimination, as to plaintiff Vincenzo Travaglini and others similarly situated, and would violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America.

15. Plaintiffs are advised by counsel and therefore aver that Section 1 of Act No. 304 which provides for the listing by the alien of all children under eighteen years of age residing with him without exempting native born or naturalized children from being listed, thus indirectly requiring the registration of citizens as well as aliens, no notice of which appears in the title of the Act, is unlawfully discriminatory.

16. Plaintiffs further aver that the provision referred to in Paragraph 5 hereof unlawfully discriminates between subjects of the United States of America who reside with aliens and subjects of the United States who reside with others not subject to the Act aforesaid.

17. Plaintiffs are advised by counsel and therefore aver that Section 1 of Act No. 304 provides for the listing of parents of children residing with the alien subject to the Act, regardless of whether or not such parents are citizens of the United States of America, thereby unlawfully discriminating between citizens who are parents of children residing with aliens subject to the provisions of the Act and parents of children who reside with aliens not covered by the Act or with others. The Act further does not set forth in its title any notice concerning the listing or registration of citizens or parents of such children.

18. Plaintiffs complain that the Act is vague, ambiguous and uncertain in that it fails to define or explain the term "resident", and therefore is incapable of being enforced.

[fol. 10] 19. Plaintiffs complain that the delegation by the General Assembly of the power to the Department of Labor and Industry to make and enforce rules and regulations to carry into effect and enforce the provisions of said Act No. 304, is an improper delegation of legislative powers concerning civil rights.

20. Plaintiffs complain that their right and the rights of others similarly situated are jeopardized by the failure of the Act to specify what court shall have jurisdiction over enforcement of the penalty provisions of the said Act No. 304, nor does the Act provide for appeal, all in violation of the due process clause of the Constitution of the United States.

21. Plaintiffs complain and aver that the Act is defective in that it fails to define failure to register thereunder as a felony or misdemeanor or to classify the offense in any manner which would let those subject to it know in what tribunal the offense could be tried. Plaintiffs complain that the right to jury trial is disregarded.

22. Plaintiffs complain that the provisions requiring aliens to carry registration cards on their persons at all times, to be displayed to any peace officer requesting the exhibition of such card, is an unlawful invasion of the right of privacy of the plaintiffs and others, since, conversely, native born citizens will have to carry their birth certificates, or other indicia of their United States nativity, and naturalized aliens will have to carry their naturalization certificates, in order to avoid being summoned to a hearing as a suspected nonregistered alien.

VI. Need for Equitable Relief

23. Plaintiffs are advised by counsel and therefore aver that unless your Honorable Court will issue an injunction restraining the defendants and all other peace officers in the Commonwealth of Pennsylvania from enforcing the provisions of Act No. 304, irreparable harm will be done to the plaintiffs and to others similarly situated:

[fol. 11] (a) by the defendant, Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, unless your Honorable Court will issue a restraining order, who will direct a subordinate to promulgate rules and regulations under said Act and incur needless and illegal expenditures for the enforcement of the provisions of said Act;

(b) by the defendant, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, who will set up and classify the persons sought to be registered under the said Act

and instruct his subordinate police officers to proceed with enforcement of the provisions of the said Act, to plaintiffs' embarrassment, in interfering with the right of privacy of the plaintiffs and others similarly situated, detaining the plaintiffs and others similarly situated, in accordance with the terms of the said Act and in violation of the exclusive Federal power over aliens, unless restrained by your Honorable Court;

(c) by the defendant, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, who, unless restrained by your Honorable Court, under the terms of the Act, will refuse to issue automobile operator's license or owner's license to plaintiff, Vincenzo Travaglini, unless he complies with the unconstitutional requirements of said Act No. 304 to the great inconvenience of the said Vincenzo Travaglini, and to the detriment of his property rights in the continued issuance of said licenses.

(d) by the defendants, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, who will, unless restrained by your Honorable Court, approve requisitions for the expenses of the Department of Labor and Industry, Department of Revenue, and the Pennsylvania State Motor Police in enforcing said Act No. 304 approved on June 21st, 1939, to the irreparable loss, damage and injury of the plaintiffs and other residents, [fol. 12] citizens and taxpayers of and to the Commonwealth of Pennsylvania.

24. Plaintiffs complain and aver that unless your Honorable Court restrains the enforcement of said Act No. 304, the enforcement thereof will:

(a) interfere with the exclusive right of Congress over aliens and immigration.

(b) violate the rights of persons guaranteed under the Fourteenth Amendment to the Constitution of the United States.

(c) violate the civil rights of citizens of the United States guaranteed to them by the Constitution of the United States.

VII. Prayer

Wherefore, the plaintiffs and others similarly situated are in need of equitable relief and accordingly pray your Honorable Court:

1. That a Decree be entered restraining the defendants preliminarily until final hearing and perpetually thereafter from expending any funds of the Commonwealth of Pennsylvania whatever pursuant to any appropriations made or allocated for the enforcement of Act No. 304, a copy of which is attached to this Bill and marked Exhibit "A".

2. That a Decree be entered restraining the defendants, Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, [fol. 13] State Treasurer of the Commonwealth of Pennsylvania, preliminarily until final hearing and perpetually thereafter, from taking any steps whatever pursuant to the authority supposedly conferred on them by Act No. 304 and from enforcing the provisions of the said Act.

3. That your Honorable Court grant such further and other relief as to it may seem proper.

(S.) Isidor Ostroff, Herman Steerman, Harold Jethro Budd, Attorneys for Plaintiffs.

[fols. 14-15] *Duly sworn to by Bernard Davidowitz et al. Jurats omitted in printing.*

[fol. 16] EXHIBIT "A" TO COMPLAINT

Cases. (S. B. 199; H. B. 313.) Approved June 21, 1939

Registration of Aliens

304. An act requiring certain aliens to register with the Department of Labor and Industry and to carry and upon proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. On or before January 1, 1940, and during the month of December 1939 and of each year thereafter, every alien 18 years or over residing in this Commonwealth who is not a father or mother of a son or daughter who has served in the service of the United States during any war or who has not filed an application declaring his or her intention to become an American citizen or who, having filed such application, shall not have become naturalized within a period of three years thereafter except such aliens who have resided continuously in the United States since December 31, 1908, and who have never been convicted of any criminal offense in any court of record, shall register with the Department of Labor and Industry on forms to be prescribed and furnished by the department, and every such alien becoming a resident of this Commonwealth after January 1, 1940, shall, in like manner, register with the department within 30 days after becoming such resident. Such registration shall show the name, age, address, occupation, name of employer, characteristics of appearance, name of wife or husband if any of such alien member, names and ages of all children under 18 residing with him or her, and if not his or her own, the names of their parents, and such other information and details as the department shall direct.

Sec. 2. For each original registration and for each annual registration thereafter, the person registered shall pay the department a registration fee of $1, and shall receive an alien identification card, which he or she shall carry at all times and shall exhibit upon demand by any police officer or agent of the Department of Labor and Industry displaying evidence of his authority.

Sec. 3. No motor vehicle shall be registered in the name of any alien, nor shall any license to operate a motor vehicle be issued to any alien except those exempted under the provisions of section 1 of this act, unless such alien shall exhibit an alien identification card for the current registration period.

Sec. 4. The Department of Labor and Industry shall classify such registrations in such manner as shall best serve the purpose of ready reference, and shall furnish a copy thereof to the Pennsylvania Motor Police. All such records

shall be retained for a period of at least three years. The department shall have power to make and enforce rules and regulations to carry into effect and enforce the provisions of this act.

[fol. 17] Sec. 5. Every alien, except those exempted under the provisions of section 1 of this act, over the age of 18 who has not declared his or her intention to become an American citizen and who fails to register as provided in this act within any of the periods required hereby shall, upon summary conviction thereof, be sentenced to pay a fine of not more than $100 or to undergo imprisonment for not more than 60 days, or both.

Every alien required to be registered who shall fail to carry his or her alien identification card or who shall fail or refuse to exhibit the same when properly required to do so shall, upon summary conviction thereof, be sentenced to pay a fine of not more than $10 or to undergo imprisonment for not more than 10 days, or both.

Sec. 6 (a). Summary proceedings under this act must be commenced by the filing of information before a justice of the peace, alderman, or a magistrate, which information must be filed in the name of the Commonwealth; and within not less than five days nor more than ten days, the magistrate, alderman, or justice of the peace shall send by registered mail to the person charged at the address of such person a notice in writing of the filing of the information, together with a copy thereof and a notice to appear within 10 days of the date of the written notice. If the person named in the information shall not voluntarily appear within 10 days of the date of the written notice, a warrant may then be issued and may be served by a peace officer having authority to serve warrants.

(b) The peace officer, after serving such warrant, shall take the defendant before a magistrate within the municipality in which the defendant is found, who shall take bail either for the defendant's appearance before the magistrate who issued the warrant or for his appearance for trial in the proper court if a summary hearing is waived.

Sec. 7. All acts and parts of acts inconsistent herewith are hereby repealed. (S. B. 134; H. B. 702.)

Approved June 21, 1939.

[fol. 18] [File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed July 25, 1939

To the Honorable, the Judges of the said Court:

The defendants above-named by Claude T. Reno, Attorney General of the Commonwealth of Pennsylvania, and [fol. 20] William S. Rial, Deputy Attorney General, and representing each of the said defendants, make answer to the complaint as follows:

I. Jurisdiction and Venue

1. Admitted. Defendants, however, deny that the jurisdiction of this Court exists and may be invoked on behalf of Bernard Davidowitz who is alleged to be a citizen of the United States of America and a resident of the City of Philadelphia.

2. Admitted.

II. Description of Plaintiffs

3. Admitted.

4. Admitted.

III. Description of Defendants

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

[fol. 21] IV. Violations of Federal Constitution and Statutes upon Which Complaint Is Based

10. Admitted.

11. Denied. Defendants as advised by counsel deny that the said Act of Assembly, No. 304 of the Commonwealth of Pennsylvania of 1939, is null and void and of no effect:

(a) It is denied that the said Act of Assembly violates Article I, Section 8, Clause 3 of the Constitution of the United States;

(b) It is denied that the said Act of Assembly violates Article VI, Clause 2 of the Constitution of the United States;

(c) It is denied that the said Act of Assembly violates Section 1 of the Fourteenth Amendment to the Constitution of the United States;

(d) Denied.

(e) It is denied that said Act of Assembly violates divers provisions of the Constitution of Pennsylvania to wit:

1. Article I, Section 1 thereof;
2. Article I, Section 8 thereof;
3. Article I, Section 17 thereof;
4. Article III, Section 3 thereof;
5. Article III, Sections 7 and 8 thereof;
6. Article IX, Section 1 thereof.

[fol. 22] V. Facts of Complaint

12. Defendants deny the several averments contained in Paragraph 12. In particular:

(a) Defendants deny that the plaintiff, Bernard Davidowitz, is entitled to any relief within the jurisdiction of the said Court by reason of any averments as contained in the said sub-paragraph (a);

(b) Denied.

(c) Denied.

(d) Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

[fol. 23] VI. Need for Equitable Relief

23. Defendants deny that plaintiffs are entitled to any equitable relief under any facts averred in the complaint; they further deny that an injunction should issue enforcing the provisions of the said Act of Assembly of the Commonwealth of Pennsylvania, No. 304 of 1939 and that irreparable harm may come to the plaintiffs and others similarly situated, and particularly, they deny that an injunction should issue against the defendants severally named in the subparagraphs (a), (b), (c) and (d).

24. Defendants deny that unless Your Honorable Court restrains the enforcement of the said Act No. 304, the enforcement will:

(a) Interfere with the exclusive right of Congress over aliens and immigration;

(b) Violate the rights of persons guaranteed under the Fourteenth Amendment to the Constitution of the United States;

(c) Violate the civil rights of citizens of the United States guaranteed to them by the Constitution of the United States.

[fol. 24] VII. Prayer

Defendants deny the plaintiffs and others similarly situated, are in need of equitable relief; that they are entitled to the relief as prayed for in the prayer contained in said complaint.

VIII. Defenses

Several defendants named in the complaint are officers of the Commonwealth of Pennsylvania charged either directly or indirectly with certain duties in connection with the enforcement of the Act of the General Assembly of the said Commonwealth, No. 304 of 1939 and this answer is in-

[fol. 25] tended to raise certain questions in connection therewith and to challenge the right of the complainants under the facts averred, to the relief prayed for. The said answer is therefore filed in the nature of a demurrer substantially admitting the facts but challenging the legal conclusions of the complainants and the right of the complainants to the relief as prayed for under such conclusions.

First Defense

(a) The said Act of Assembly is not unconstitutional either under the Constitution of the United States or the Constitution of the Commonwealth of Pennsylvania and is not violative of any rights of the said complainants.

Second Defense

(b) The said Act of Assembly of the said Commonwealth is a proper exercise of the police powers of the said Commonwealth expressly reserved to it under the Constitution of the United States.

Third Defense

(c) Bernard Davidowitz is a citizen of the United States and of the Commonwealth of Pennsylvania and there is no diversity of citizenship between him and the defendants named in the complaint.

(S.) Claude T. Reno, Attorney General of the Commonwealth of Pennsylvania; (S.) William S. Rial, Deputy Attorney General.

[fol. 26] [File endorsement omitted.]

[fol. 27] In United States District Court

[Title omitted]

Order Setting Date for Argument on Motion for Judgment

And Now, to wit, this 2nd day of August, A. D. 1939, upon motion of plaintiffs, by their attorneys, Isidor Ostroff, Esq., Herman Steerman, Esq., Harold Jethro Budd, Esq., of Philadelphia, Pa., and Ralph P. Needle, Esq., of Scranton,

Pa., for judgment on the pleadings, the Court fixes the day of October 2, A. D. 1939, at 10 A. M. (E. S. T.) in Room Post Office and Federal Court Building, Scranton, Pennsylvania, as the time and place for argument on the above motion.

(S.) Albert L. Watson, U. S. District Court Judge.

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR JUDGMENT ON PLEADINGS—Filed August 2, 1939

Pursuant to Rule 12 (c) of the Rules for Civil Procedure for the District Court of the United States, plaintiffs, by their attorneys, Isidor Ostroff, Esq., Herman Steerman, Esq., and Harold Jethro Budd, Esq., of Philadelphia, and Ralph P. Needle, Esq., of Scranton, Pennsylvania, file this Motion for judgment on the Pleadings, for the following reasons:

I. Jurisdiction and Venue

The defendants admit the jurisdiction and venue of the court, denying however that one of the plaintiffs, Bernard [fol. 29] Davidowitz, is in standing before your Honorable Court.

II. Description of Plaintiffs

This portion of the Complaint is admitted by the defendants.

III. Description of Defendants

This portion of the Complaint is also admitted by the defendants.

IV. Violation of Federal Constitution and Statutes Upon Which Complaint is Based

This portion of the Complaint is insufficiently denied.

V. Facts of Complaint

This section of the Complaint is also insufficiently denied.

VI. Need for Equitable Relief

The defendants do not sufficiently deny the need for equitable relief.

VII. Prayer

The defendants do not sufficiently deny the need for the equitable relief prayed for by plaintiffs.

VIII. Defenses

First Defense

This defense is insufficiently pleaded. It is merely a general allegation unsubstantiated by facts.

Second Defense

This defense is also insufficiently pleaded. It is merely a general allegation unsubstantiated by facts.

[fol. 30]

Third Defense

This defense is immaterial, irrelevant, unresponsive and insufficient.

Wherefore, plaintiffs, by their attorneys as aforesaid, move for judgment on the pleadings.

Isidor Ostroff, Herman Steerman, Harold Jethro Budd, Ralph P. Needle, Attorneys for Plaintiffs, by (S.) Isidor Ostroff.

[fol. 31] [File endorsement omitted.]

[fol. 32] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 201. Civil

BERNARD DAVIDOWITZ, a Resident, Citizen and Taxpayer of and to the Commonwealth of Pennsylvania, and Vincenzo Travaglini, a Resident and Taxpayer of and to the Commonwealth of Pennsylvania, for Themselves and on Behalf of Any and All Other Residents, Citizens and/or Taxpayers as May Wish to Join Them as Party Plaintiffs, Plaintiffs,

v.

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania; Lynn G. Adams, Commissioner of Pennsylvania State Motor Police; William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania; Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, Defendants

OPINION—Filed November 30, 1939

[fol. 33] BIGGS, Circuit Judge:

The General Assembly of the Commonwealth of Pennsylvania has enacted a statute approved June 21, 1939, requiring certain aliens to register annually with the Department of Labor and Industry of the Commonwealth and to carry and, upon demand of any police officer or agent of the Department of Labor and Industry, to exhibit identification cards.

This Act, No. 304 of the 163rd General Assembly,[1] requires such registration to be made by these aliens on or before the first day of January, 1940 and during the month of December, 1939. Certain aliens are excepted from the operation of the Act, including those residing in the Commonwealth who are father or mother of a son or daughter who served in the service of the United States during any war, or those who have filed declarations of intention to become American

[1] The Acts of the Session have not yet been compiled in pamphlet form.

citizens within a period of three years and who have not been convicted of any criminal offense in any court of record, or who have resided continuously in the United States since December 31, 1908. The Act provides that each registration shall show the name, age, address and occupation of the alien, the name of his or her employer, the characteristics or appearance of the alien and such other data and details as the Department of Labor and Industry shall direct. The Act provides also that no motor vehicle shall be registered in the name of any non-exempt alien and that a license to operate an automobile shall not be issued to any non-exempt alien except upon the exhibition of his identification card for the current registration period.

Drastic punishments are provided for those aliens who are required to register and fail to do so and lesser penalties are prescribed for the non-exempt alien who fails to carry with him his identification card or refuses to exhibit it [fol. 34] upon proper demand. A copy of the Act is set out upon the margin of this opinion.[2]

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[2] "An Act Requiring certain aliens to register with the Department of Labor and Industry and to carry and, upon proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. On or before the first day of January, one thousand nine hundred and forty, and during the month of December, of the year one thousand nine hundred and thirty-nine and of each year thereafter, every alien, eighteen (18) years or over, residing in this Commonwealth, who is not a father or mother of a son or daughter who has served in the service of the United States during any war, or who has not filed an application declaring his or her intention to become an American citizen, or who, having filed such application, shall not have become naturalized within a period of three years thereafter, except such aliens who have resided continuously in the United States since December thirty-first, one thousand nine hundred and eight, and who have never been convicted of any criminal offence in any court of record, shall register with the Department of Labor and Industry, on forms to be prescribed and furnished by the department; and every such alien becoming a resident of

The suit at bar is brought by the plaintiffs to test the validity of the Act. They pray for an injunction against [fol. 35] the defendants, all officers of the Commonwealth of Pennsylvania, prohibiting the enforcement of the Act. The suit is framed as a class bill brought by the plaintiffs on behalf of "residents, citizens and taxpayers" of Pennsylvania.

The plaintiff, Davidowitz, is a naturalized citizen of the United States, a resident of Philadelphia and a taxpayer of the Commonwealth of Pennsylvania. The complaint alleges that he is of foreign appearance and speaks English with a noticeable foreign accent and therefore despite his naturalization he will be subjected to constant questioning [fol. 36] by police officers, will be compelled to demonstrate

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this Commonwealth after the first day of January, one thousand nine hundred and forty, shall, in like manner, register with the department within thirty days after becoming such resident. Such registration shall show the name, age, address, occupation, name of employer, characteristics of appearance, name of wife or husband, if any, of such alien member, names and ages of all children under eighteen (18) residing with him or her, and, if not his or her own, the names of their parents, and such other information and details as the department shall direct.

Section 2. For each original registration and for each annual registration thereafter, the person registered shall pay to the department a registration fee of one dollar ($1.00), and shall receive an alien identification card which he or she shall carry at all times and shall exhibit upon demand by any police officer or agent of the Department of Labor and Industry displaying evidence of his authority.

Section 3. No motor vehicle shall be registered in the name of any alien, nor shall any license to operate a motor vehicle be issued to any alien except those exempted under the provisions of section one of this act, unless such alien shall exhibit an alien identification card for the current registration period.

Section 4. The Department of Labor and Industry shall classify such registrations in such manner as shall best serve the purpose of ready reference, and shall furnish a copy thereof to the Pennsylvania Motor Police. All such records shall be retained for a period of at least three years. The department shall have power to make and enforce rules and

constantly that he is not an alien required to carry a registration card, will be unjustly discriminated against, constantly embarrassed and will have to carry proof of his naturalization with him continuously.

The plaintiff, Travaglini, is an alien who has resided in the City of Philadelphia, since his arrival in the United States from Italy in 1920. The complaint sets forth sufficient facts to show that he is not included within the exemptions of the Act. Travaglini contends that the Act encroaches upon a field confided by the Constitution to the Federal Government and that its enforcement will deny him equal protection of the laws. He states that he will be dis- [fol. 37] criminated against also because by the terms of the Act the Secretary of Revenue must refuse to issue to him either driver's license or owner's certificate for a motor vehicle except upon the production of his registration card and that this will interfere "* * * with his right as a resident

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regulations to carry into effect and enforce the provisions of this act.

Section 5. Every alien, except those exempted under the provisions of section one of this act, over the age of eighteen (18), who has not declared his or her intention to become an American citizen, and who fails to register as provided in this act within any of the periods required hereby, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than one hundred dollars ($100.00) or to undergo imprisonment for not more than sixty (60) days, or both.

Every alien required to be registered, who shall fail to carry his or her alien identification card or who shall fail or refuse to exhibit the same when properly required to do so, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than ten dollars ($10.00) or to undergo imprisonment for not more than ten (10) days, or both.

Section 6. (a) Summary proceedings under this act must be commenced by the filing of information before a justice of the peace, alderman or a magistrate, which information must be filed in the name of the Commonwealth, and within not less than five days nor more than ten days the magistrate, alderman or justice of the peace shall send by registered mail, to the person charged, at the address of such person, a notice in writing, of the filing of the information,

alien of * * * Pennsylvania to obtain employment requiring the use and operation of an automobile."

The defendants have filed an answer admitting all well pleaded facts. The plaintiffs have moved for judgment upon the pleadings in accordance with the provisions of Rule 12 (c) of the Federal Rules of Civil Procedure.

Jurisdiction

As to the Plaintiff, Travaglini

Jurisdiction is vested in this court by virtue of the provisions of Section 266 of the Judicial Code, as amended, (28 U. S. C. A. 380) [3] and of Section 24 (14) of the Judicial Code as amended by 36 Stat. 1092 (28 U. S. C. A. 41 (14)) providing that the District Courts of the United States shall have original jurisdiction of all suits at law or in equity "* * * to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the

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together with a copy thereof, and a notice to appear within ten (10) days of the date of the written notice. If the person named in the information shall not voluntarily appear within ten (10) days of the date of the written notice, a warrant may then be issued and may be served by a peace officer having authority to serve warrants.

(b) The peace officer, after serving such warrant shall take the defendant before a magistrate within the municipality in which the defendant is found, who shall take bail either for the defendant's appearance before the magistrate who issued the warrant or for his appearance for trial in the proper court if a summary hearing is waived.

Section 7. All acts and parts of acts inconsistent herewith are hereby repealed."

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[3] Section 266 of the Judicial Code as amended provides that three judges, one of whom shall be a Justice of the Supreme Court or a Circuit Judge, shall sit to hear an injunction suit by which it is sought to suspend or restrain the operation of a state statute.

United States, or of all persons within the jurisdiction of the United States." Hague v. Committee for Industrial Organization, — U. S. —.

The Act requires non-exempt aliens to be registered no later than January 1, 1940. Registration of aliens is to [fol. 38] commence upon December 1, 1939. The damage threatened to Travaglini therefore is imminent. The action at bar is not brought prematurely. Truax v. Raich, 239 U. S. 33, 36; Detroit Creamery Co. v. Kinnane, 264 F. 845, decree affirmed Kinnane v. Detroit Creamery Co., 255 U. S. 102; Pennsylvania v. West Virginia, 262 U. S. 553, 592; Trade Dollar Consolidated Mining Co. v. Fraser, 148 F. 585; Louisville & N. R. Co. v. Railroad Commission of Alabama, 157 F. 944.

As to the Plaintiff, Davidowitz

As to the plaintiff, Davidowitz, a naturalized citizen of the United States, his right to reside in the State of Pennsylvania and to move freely within that Commonwealth without unlawful interference by its police is protected by law and the Constitution. His rights as a citizen, however, are not justiciable in the suit at bar. The Act is not directed at citizens, either naturalized or native born. If any such were to suffer personal inconvenience, annoyance or embarrassment from enforcement of the Act, they would find existing law quite adequate to redress their grievances. Well advised, indeed, would be the police officer, attempting to enforce the statute, not to lay hands upon or annoy or harass any law-abiding citizen, regardless of his place of birth. In fact, the possible annoyance and embarrassment generally, which Davidowitz fears, would have to be so carefully guarded against by any one attempting to enforce the Act, that it is questionable whether the Act could be enforced at all. In any event, the point is that Davidowitz, like all other citizens, has no present complaint in this case, cognizable in a United States court. While he is a taxpayer of the Commonwealth of Pennsylvania, as averred and admitted, his complaint does not rest on a taxpayer's equity but on a merely anticipated violation of his rights as a citizen. The complaint, therefore, states no present cause of action in Davidowitz.

[fol. 39] The Law

We are of the opinion that the Act is unconstitutional.

The Act Encroaches Upon a Field Reserved to Federal Action

The Act fails to state or suggest its purpose. The Commonwealth contends that the statute provides for nothing more serious than a census and that its enforcement will be of service to Pennsylvania in administering certain state laws relating to aliens. For example, statutes of Pennsylvania provide that unnaturalized foreign born residents may not fish within the confines of the Commonwealth, P. L. 448, Section 240 (30 Purdon's Pennsylvania Statutes, Annotated 240), or hunt therein, P. L. 359, Article IX, Sections 901, 905 (34 Purdon's Pennsylvania Statutes, Annotated, 901, 905), or be employed upon any public work, P. L. 269, Section 1 (43 Purdon's Pennsylvania Statutes Annotated 151. In our opinion, however, the Act is far more than a census statute. It places conditions upon the right of an alien to reside in Pennsylvania. The alien must register annually and carry his alien registration certificate, simply a card of identity, with him at all times under pain of a drastic penalty. He must produce his registration certificate upon the demand of any police officer, and if he fails to do so may suffer a penalty nearly as drastic. The alien is thus placed under the constant surveillance of the police power of Pennsylvania, not as any other resident might be placed upon the occasion of the commission of a crime or for the good of the Commonwealth, but simply because he is an alien.

It must be assumed that Travaglini was lawfully admitted to the United States and that his admission was pursuant to the provisions of Federal law. He was admitted therefore, as was stated by the Chief Justice in Truax v. Raich, supra, p. 39, "* * * with the privilege of entering and abiding in the United States, and hence of [fol. 40] entering and abiding in any state in the Union." His right to reside in the United States or in any State depends upon and is settled by Federal law. This principle is decisive in the case at bar. It has been enunciated by the Supreme Court several times. In the case of Fong Yue Ting v. United States, 149 U. S. 698, 714, arising under the Chinese Exclusion Act of May 5, 1892, 27 Stat. 25, the Su-

preme Court stated, "Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country, and to take all proper means to carry out the system which it provides." In the case of Zakonaite v. Wolf, 226 U. S. 272, 275, arising upon appeal from an order of the Secretary of Commerce and Labor based upon the Act of February 20, 1907, 34 Stat. 898, requiring the deportation of an alien who was practicing prostitution, the Supreme Court said, "It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States, and to regulate their coming includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend * * *".

In the more recent case of Arrowsmith v. Voorhies, 55 F. (2d) 310, a statute of Michigan (Pub. Acts 1930, No. 241) was under consideration. It provided, among other things, that persons of foreign birth illegally entering the United States should be denied admission, or if detected after entry should be deported and that unnaturalized foreign born citizens should obtain certificates of legal residence. The court held this statute unconstitutional and stated that by its terms the State of Michigan was attempting to usurp a power vested by the Constitution exclusively in Congress "over the control of aliens and immigration". The court, citing Henderson v. Mayor of New York, 92 U. S. 259, and Chy Lung v. Freeman, 92 U. S. 275, made [fol. 41] plain that the Michigan statute could not be justified upon the theory of the exercise of state police power, and said, p. 312, "* * * the power to regulate the terms and conditions under which aliens may live in any of the several states having been given by the Constitution to the federal government, and that government having exercised it, the right of the federal government is paramount and exclusive, and the act under consideration is an unlawful invasion of it."

The decision of the Supreme Court in the Truax case cited above casts much light upon the correct determination of the question presented for our consideration. In the Truax case it appears that a statute of Arizona, Act

of December 14, 1914 (Laws of Arizona, 1915, Initiative Measures, p. 12) provided that any person or corporation employing more than five individuals at one time, of the number employed, should employ no less than 80% qualified electors or native born citizens of the United States. Raich, a native of Austria and an inhabitant of Arizona, but not a qualified elector, brought suit to enjoin the enforcement of this Act upon the ground that it would deprive him of his livelihood. The Supreme Court held the statute unconstitutional upon the ground that its provisions were repugnant to the Fourteenth Amendment. Chief Justice Hughes, delivering the opinion of the Court, said, p. 42, "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the Acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."

While the Truax case deals specifically with a limitation imposed by a statute upon the right of an alien to [fol. 42] earn a living, its principle is applicable under the circumstances of the case at bar for Travaglini cannot live in Pennsylvania except under the burden of compulsory registration, precisely as Raich could not live in Arizona unless he was permitted freely to earn his livelihood. As stated by the Chief Justice, an alien cannot live where he cannot work. It is equally true that an alien cannot work where he cannot live. In the case at bar as in the Truax case the right of the alien to reside within the state is circumscribed by statute.

The power of the Federal Government to require the registration of aliens is clear. Congress has legislated to some extent in this particular field already. See Act of June 29, 1906, c. 3592, Sec. 1, 34 Stat. 596 (8 U. S. C. A. 106) and Act of February 5, 1917, c. 29, Sec. 12, 39 Stat. 882 (8 U. S. C. A. 148). Congress has also legislated in respect to a large part of the field of alien control, specifying terms and conditions upon which aliens may remain in the United

States, the method of their entry and the conditions upon which they may be deported. A considerable portion of Title 8 of the Code of the United States (8 U. S. C. A.) is devoted to these subjects. If existing provisions of the Federal laws are insufficient for the control of aliens, further legislation to such ends is within the discretion of Congress.

The Act does not pertain to a field in which a state may sustain an interest, Truax v. Raich, supra, pp. 39, 40, such as public employment, Heim v. McCall, 239 U. S. 175, ownership in land, Terrace v. Thompson, 263 U. S. 197, conservation of natural resources, Patsone v. Pennsylvania, 232 U. S. 138, and McCready v. Virginia, 94 U. S. 391.

The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without authority to legislate. Therefore it may not be justified as an exercise of the police power of the State of Pennsylvania. It attempts to usurp power confided by the Constitution to the Federal government.

[fol. 43] The Act Denies Equal Protection of the Laws to the Alien

Since the Act impairs the right of the non-exempt alien to reside within the Commonwealth of Pennsylvania, the Commonwealth having legislated in a field reserved to the Federal government, the classification of the Act is as unwarranted as it is unreasonable and the alien is thereby deprived of the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment.

While the prohibition of the Amendment against the denial of equal protection of the laws to "any person", whether citizen or alien, does not require a statute to have equality of operation insofar as every individual may be concerned and such a statute may affect the status of each individual differently in his relationship to its subject matter, nonetheless the classification must be based upon reasonable grounds. The statute at bar cannot be so justified, but, on the contrary, as we have indicated, imposes a burden upon aliens simply because they are aliens. It is based upon the single fact of alienage. Even assuming that the Commonwealth of Pennsylvania possessed power to make the classification under consideration, nonetheless that classification is unreasonable for the Commonwealth would

permit citizens and such aliens as are within the exemptions of the statute to pass freely from place to place, but all other aliens, though lawfully within the State, must register, pay annual fees, carry identification cards to be produced on demand, and are subject to drastic penalties if they do not do so. The leading case condemning an analogous classification as unreasonable is the Truax case, but see also Ex Parte Kotta, 187 Cal. 27, 31, 32, 200 Pacific 937, a case almost upon all fours with that at bar. In the Kotta case the Supreme Court of California held, relying upon both the Fourteenth Amendment and the Civil Rights Act, that the alien poll tax law of California (Statutes of California, 1921, Ch. 424, pp. 613-624), creating an alien poll tax, was invalid. The court said, p. 31, "Stated very generally, the requirement is for [fol. 44] equal protection and security of all, citizens and aliens alike, under like circumstances, in the enjoyment of their personal and civil rights, and in the imposition of burdens, such as penalties, taxes, * * *".

The classification of the statute at bar is not applied even to all aliens, or to such aliens as are ineligible for citizenship or to those who have failed to file a declaration of intention to become citizens. The Act requires registration by an alien who has not filed a declaration of intention to become a citizen or who has filed such a declaration and has failed to become a citizen within three years. That this requirement is arbitrary, unreasonable and capricious, is demonstrated by the provisions of Section 382 of Title 8 of the Judicial Code as amended, 52 Stat. 1247 (8 U. S. C. A. 382), a section of the Federal Naturalization Act, which provides that in order to admit an alien to citizenship it shall appear to the satisfaction of the court that immediately preceding the date of the alien's application for citizenship he "* * * has resided continuously within the United States, for at least five years * * *". It follows therefore that if it is the intent of the Statute to single out persons who are not in sympathy with our institutions and to create a class of them, it fails palpably.

It is not an unreasonable conclusion that the primary purpose of the Act was to force aliens in the State to become naturalized. As much was argued at bar by counsel for the Commonwealth. While naturalization of aliens residing within our borders is a matter to be encouraged, the desire of the applicant for citizenship should be inspired

and engendered by his observation of and experience with the living example of true democracy. It must never be compelled by an act of oppression or tyranny. Otherwise, we might well be deluding ourselves in believing that, when the new citizen abjures allegiance to his late sovereign and swears fealty to our government, his act is one of the heart and not of a designing mind, goaded to a subterfuge. Citizenship, in the best sense of that term, rather than the number of naturalizations, is the thing of real importance. [fol. 45] Regulation of naturalization rests with the Federal government.

A further purpose of the Legislature may well have been to cause aliens to leave Pennsylvania and enter states where they are not compelled to register or subjected to a registration fee. If so, the statute looks down that dangerous road by which the states of the United States might well reach the unhappy status of competitive nations. The Act sub judice is not far removed from those statutes which provide for fees, exactions, licenses and even import taxes directed by state against state, their respective goods and inhabitants. For a state to require an alien resident to carry a card of identity could result in any citizen being compelled to prove upon demand that he is not in the class designated. The control of aliens and the conditions of their habitation in the states of the United States must remain in the Federal government.

We wish to make it plain that, in passing upon the questions involved in this case, we have given no effect whatsoever to Travaglini's complaint that, as a non-exempt alien, he would be damaged by being unable to procure an automobile license in Pennsylvania. The provision of the statute in that respect falls necessarily because the Act as a whole falls. However, what the State might do directly in the matter of prohibiting the issuance of automobile licenses to aliens (See Patsone v. Pennsylvania, supra), it is unnecessary for us either to consider or decide. Accordingly, we express no opinion in such regard and mean to imply none.

We do not deem it necessary to comment upon other contentions expressed at the argument and upon the briefs.

A perpetual injunction will issue against the defendants named, officers of the Commonwealth of Pennsylvania, (Ex parte Young, 209 U. S. 123, 155, 161; Philadelphia Com-

pany v. Stimson, 223 U. S. 607, 620, and Truax v. Raich, supra, p. 37) enjoining them from enforcing the Act.

(S.) John Biggs, Jr., U. S. Circuit Judge; (S.) Charles Alvin Jones, U. S. Circuit Judge; (S.) Albert L. Watson, U. S. District Judge.

November 30, 1939.

[File endorsement omitted.]

[fol. 46] In United States District Court, Middle District of Pennsylvania

Writ of Perpetual Injunction—Filed December 11, 1939

The President of the United States to Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, Greeting:

Whereas, Bernard Davidowitz, a resident, citizen and taxpayer of and to the Commonwealth of Pennsylvania, Vincenzo Travaglini, a resident and taxpayer of and to the Commonwealth of Pennsylvania, for themselves, and on behalf of any and all other residents, citizens, and/or taxpayers, as may wish to join them as party plaintiffs, lately exhibited their bill of complaint, in the District Court of the United States, for the Middle District of Pennsylvania, in the Third Circuit, against you, the said Defendants, praying to be relieved touching the matters therein complained of, and especially that you Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, and all acting under you may be restrained from further enforcing the Act No. 304, of

the 163rd General Assembly and the rights of the said complainants in the premises, in the said bill mentioned, in any way or manner, contrary to law or equity: We, therefore, in consideration thereof and also of the particular matters in the said bill set forth, do strictly command and enjoin you, the said Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, your servants, agents, and all others acting under or with you, and each and every of you, that from henceforth You Do Absolutely And Entirely Desist and Refrain from the further constructing, or using, or enforcing in any way or manner, directly or indirectly, the Act of the 163rd General Assembly, No. 304, requiring registration to be made by aliens on or before the first day of January, 1940 and during the month of December, 1939, described in the said bill of complaint, and in the affidavit of the complainants thereto annexed.

Witness The Honorable the Judges of the District Court of the United States, for the Middle District of Pennsylvania, at Scranton, this 30th day of November, A. D. 1939 and in the 164th year of the Independence of the United States.

S. W. Hofford, Clerk of the District Court. Per (s) R. G. Lohmann, Deputy. (Seal.)

Dec. 4, 1939. Service of the within writ is hereby accepted for the various respondents named in the said writ.

(S.) William S. Rial, Deputy Attorney General; M. Louise Rutherford, Deputy Atty. General.

[File endorsement omitted.]

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AMENDING WRIT OF PERPETUAL INJUNCTION—Filed Dec. 15, 1939

And Now, to-wit, this 15th day of December, 1939, it is ordered that the writ of perpetual injunction heretofore

issued be and the same hereby is amended by striking the word "further" where it first appears in said writ; by striking from the said writ the phrase "the further constructing, or using, or"; and by striking therefrom the words "requiring registration to be made by aliens on or before the first day of January, 1940 and during the month of December, 1939."

(S.) Albert L. Watson, United States District Judge.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AMENDING OPINION—Filed December 29, 1939

And Now, to-wit, this 28th day of December, 1939, it is ordered that the printed opinion filed in the above entitled cause be amended by striking from note 3 appearing upon page 6 the semicolon, quotation mark and three periods before the word "that" as the same appear and the quotation mark after the word "statute" in said note; and by striking the numeral "2" from the second line of the second para-
[fol. 49] graph of page nine and substituting in lieu thereof the numeral "3"; and by striking the word "Judicial" from the eleventh line of the second paragraph of page eleven of said printed opinion and inserting after the word "Code" the phrase "of the United States (8 U. S. C. A.)".

For the Court.

(S.) John Biggs, Jr., United States Circuit Judge.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 7, 1940

To the Honorable Judges of the United States District Court for the Middle District of Pennsylvania:

Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commis-

sioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, [fol. 51] State Treasurer of the Commonwealth of Pennsylvania, defendants in the above entitled case, feeling themselves aggrieved by the final decree entered by this court on November 30, 1939, pray an appeal from said decree to the Supreme Court of the United States, in accordance with the statutory requirements.

The particulars wherein they consider the decree erroneous are set forth in the assignment of errors accompanying this petition, and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings, and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

(S.) William S. Rial, Deputy Attorney General;
M. Louise Rutherford, Deputy Attorney General;
Claude T. Reno, Attorney General.

Dated February —, 1940.

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 7, 1940

Now come Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, defendants in the above entitled cause, by their re-
[fol. 53] spective counsel and in connection with their appeal, file the following assignments of error upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this court, entered November 30, 1939.

The District Court erred:

(1) In holding and deciding that the Alien Registration Act of the General Assembly of the Commonwealth of Pennsylvania, approved June 21, 1939, P. L. 652, was unconstitutional, by stating:

"We are of the opinion that the Act is unconstitutional."

(2) In holding and deciding that the said Alien Registration Act:

"* * * does not pertain to a field in which a state may sustain an interest, Truax v. Raich, supra, pp. 39, 40, such as public employment, Heim v. McCall, 239 U. S. 175, ownership in land, Terrace v. Thompson, 263 U. S. 197, conservation of natural resources, Patsone v. Pennsylvania, 232 U. S. 138 and McCready v. Virginia, 94 U. S. 391."

(3) In holding and deciding that:

"The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without authority to legislate. Therefore it may not be justified as an exercise of the police power of the State of Pennsylvania. It attempts to usurp power confided by the Constitution to the Federal Government."

(4) In holding and deciding that the:

"* * * purpose of the Legislature may well have been to cause aliens to leave Pennsylvania and enter states where they are not compelled to register or subjected to a registration fee. * * *"

[fol. 54] (5) In holding and deciding that:

"* * * The control of aliens, and the conditions of their habitation in the states of the United States must remain in the Federal government."

(6) In holding and deciding that the Act imposed an unreasonable classification and failed to distinguish the Penn-

sylvania Act from the acts in question in the Truax Case and Ex Parte Kotta Cases.

(S.) William S. Rial, Deputy Attorney General;
M. Louise Rutherford, Deputy Attorney General;
Claude T. Reno, Attorney General.

Dated February —, 1940.

[fol. 55] [File endorsement omitted.]

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 8, 1940

In the above-entitled cause, Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, defendants, having made and filed their [fol. 57] petition, praying an appeal to the Supreme Court of the United States from the final decree of this court, entered November 30, 1939, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of the court in said case made and provided, it is

Ordered and decreed that the appeal be, and the same is hereby allowed as prayed for.

By the Court:

(S.) Albert L. Watson, United States District Judge.

Dated, February 8, 1940.

[fols. 58-62] [File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed February 7, 1940

To the Clerk:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Supreme Court

of the United States pursuant to the appeal of said court [fol. 64] heretofore filed and allowed, and incorporate in said transcript the following:

(1) Complaint of Bernard Davidowitz and Vincenzo Travaglini.
(2) Answer of Claude T. Reno, Attorney General.
(3) Motion for judgment on pleadings.
(4) Opinion of the court, filed November 30, 1939.
(5) Final decree, filed November 30, 1939.
(6) Petition for appeal.
(7) Notice of appeal and acknowledgment of service.
(8) Assignment of errors.
(9) Order allowing appeal.
(10) Statement of jurisdiction of the Supreme Court, together with notice and acknowledgment of service.
(11) Praecipe for transcript of record and acknowledgment thereof.
(12) Clerk's certificate.

(S.) William S. Rial, Deputy Attorney General;
M. Louise Rutherford, Deputy Attorney General;
Claude T. Reno, Attorney General.

Dated February —, 1940.

(Proof of service omitted in printing.)

[fols. 65-72] [File endorsement omitted.]

[fol. 73] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 74] Citation in usual form showing service on R. P. Needle, filed Feb. 8, 1940, omitted in printing.

[fol. 75] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of the Record to be Printed—Filed March 14, 1940

Come now the appellants and say that they will rely upon the points in the Assignment of Error in brief and oral

argument before this Court on their appeal in the above entitled cause.

[fol. 76] Appellants further state that the entire record in this cause as offered in this Court is necessary for consideration of the points set forth above.

William S. Rial, Deputy Attorney General. M. Louise Rutherford, Deputy Attorney General. Claude T. Reno, Attorney General.

March 14, 1940.

Service of a copy of this statement of points to be relied upon and designation of the record to be printed is acknowledged this 14th day of March, 1940.

——, Counsel for Appellees.

[fol. 77] [File endorsement omitted.]

Endorsed on cover: File No. 44,184. M. Pennsylvania, D. C. U. S. Term No. 22. Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants, vs. Bernard Davidowitz and Vincenzo Travaglini. Filed March 1, 1940. Term No. 22, O. T. 1940.

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FILE COPY

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MAR. 1 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 777 22

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Appellants,

vs.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

STATEMENT AS TO JURISDICTION.

CLAUDE T. RENO,
Attorney General of Pennsylvania;
M. LOUISE RUTHERFORD,
WILLIAM S. RIAL,
Deputy Attorneys General of Pennsylvania.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 201

BERNARD DAVIDOWITZ, A RESIDENT, CITIZEN AND TAXPAYER OF AND TO THE COMMONWEALTH OF PENNSYLVANIA, AND VINCENZO TRAVAGLINI, A RESIDENT AND TAXPAYER OF AND TO THE COMMONWEALTH OF PENNSYLVANIA, FOR THEMSELVES AND ON BEHALF OF ANY AND ALL OTHER RESIDENTS, CITIZENS AND/OR TAXPAYERS AS MAY WISH TO JOIN THEM AS PARTY PLAINTIFFS,

Plaintiffs,

vs.

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, LYNN G. ADAMS, COMMISSIONER OF PENNSYLVANIA STATE MOTOR POLICE, WILLIAM J. HAMILTON, JR., SECRETARY OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA, WARREN R. ROBERTS, AUDITOR GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, AND F. CLAIR ROSS, STATE TREASURER OF THE COMMONWEALTH OF PENNSYLVANIA,

Defendants.

STATEMENT AS TO JURISDICTION OF APPEAL.

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of

Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, defendants, herewith submit their statement, showing the basis of jurisdiction of the Supreme Court in the above entitled case on appeal.

A. The Statutory jurisdiction of the Supreme Court to review by direct appeal the official decree complained of is conferred by Section 266 of the Judicial Code, as amended.

B. The official decree sought to be reviewed was entered November 30, 1939. The petition for appeal was filed and the order allowing such appeal was entered February 8, 1940.

C. This suit was brought by Bernard Davidowitz and Vincenzo Travaglini against Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania to enjoin and prohibit defendants from enforcing the Act of the General Assembly of the Commonwealth of Pennsylvania, approved June 20, 1939, requiring certain aliens to register annually with the Department of Labor and Industry of the Commonwealth of Pennsylvania, and to carry, and upon demand of any officer or agent of the department, to exhibit identification card.

The answers of the defendant admitted the facts alleged in the petition, but took issue on the question of law involved by denying that the Alien Registration Act violated the Constitution of the United States, or any part thereof.

Final hearing was held before the Statutory Court of three judges on October 14, 1939.

The written opinion was handed down November 30, 1939, and the final decree perpetually enjoins the officers of the Commonwealth of Pennsylvania from enforcing the aforesaid Act, the Alien Registration Act.

D. The questions presented are substantial and of public importance. Whether the States have the authority, under the police power, to reasonably restrict aliens resident within their borders, involves a matter affecting the welfare of all residents, citizens and aliens. The questions here involved will continue to arise until the matter is finally determined by the Supreme Court.

E. The following cases sustain the jurisdiction of the Supreme Court to review the decree of the District Court:

Brucker v. *Fisher*, 49 F. (2d) 759, dismissing Appeal (D. C. 1930) 41 F. (2d) 774;

Interstate Busses Corporation v. *Blodgett*, (Conn. 1928), 48 S. Ct. 230; 276 U. S. 245, 72 L. Ed. 551;

Oklahoma Gas & Electric Co. v. *Oklahoma Packing Co.*, (Okla. 1934), 43 S. Ct. 732; 292 U. S. 386, 78 L. Ed. 1318, dism. appeal (D. C. 1933), 6 F. Supp. 893.

Copy of the opinion of the District Court is appended hereto.

(S) WILLIAM S. RIAL,
Deputy Attorney General.
(S) M. LOUISE RUTHERFORD,
Deputy Attorney General.
(S) CLAUDE T. RENO,
Attorney General.

Dated February —, 1940.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

No. 201. Civil.

BERNARD DAVIDOWITZ, a Resident, Citizen and Taxpayer of and to the Commonwealth of Pennsylvania, and VINCENZO TRAVAGLINI, a Resident and Taxpayer of and to the Commonwealth of Pennsylvania, for Themselves and on Behalf of Any and All Other Residents, Citizens and/or Taxpayers as May Wish to Join Them as Party Plaintiffs, *Plaintiffs,*

v.

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, LYNN G. ADAMS, Commissioner of Pennsylvania State Motor Police, WILLIAM J. HAMILTON, JR., Secretary of Revenue of the Commonwealth of Pennsylvania, WARREN R. ROBERTS, Auditor General of the Commonwealth of Pennsylvania, and F. CLAIR ROSS, State Treasurer of the Commonwealth of Pennsylvania, *Defendants.*

Opinion.

(Filed November 30, 1939.)

BIGGS, *Circuit Judge:*

The General Assembly of the Commonwealth of Pennsylvania has enacted a statute approved June 21, 1939, requiring certain aliens to register annually with the Department of Labor and Industry of the Commonwealth and to carry and, upon demand of any police officer or agent of the Department of Labor and Industry, to exhibit identification cards.

This Act, No. 304 of the 163rd General Assembly,[1] requires such registration to be made by these aliens on or before the first day of January, 1940 and during the month of December, 1939. Certain aliens are excepted from the

[1] The Acts of the Session have not yet been compiled in pamphlet form.

operation of the Act, including those residing in the Commonwealth who are father or mother of a son or daughter who served in the service of the United States during any war, or those who have filed declarations of intention to become American citizens within a period of three years and who have not been convicted of any criminal offense in any court of record, or who have resided continuously in the United States since December 31, 1908. The Act provides that each registration shall show the name, age, address and occupation of the alien, the name of his or her employer, the characteristics or appearance of the alien and such other data and details as the Department of Labor and Industry shall direct. The Act provides also that no motor vehicle shall be registered in the name of any non-exempt alien and that a license to operate an automobile shall not be issued to any non-exempt alien except upon the exhibition of his identification card for the current registration period.

Drastic punishments are provided for those aliens who are required to register and fail to do so and lesser penalties are prescribed for the non-exempt alien who fails to carry with him his identification card or refuses to exhibit it upon proper demand. A copy of the Act is set out upon the margin of this opinion.[2]

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[2] "An Act Requiring certain aliens to register with the Department of Labor and Industry and to carry and, upon proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. On or before the first day of January, one thousand nine hundred and forty, and during the month of December, of the year one thousand nine hundred and thirty-nine and of each year thereafter, every alien, eighteen (18) years or over, residing in this Commonwealth, who is not a father or mother of a son or daughter who has served in the service of the United States during any war, or who has not filed an application declaring his or her intention to become an American citizen, or who, having filed such ap-

The suit at bar is brought by the plaintiffs to test the validity of the Act. They pray for an injunction against the defendants, all officers of the Commonwealth of Pennsylvania, prohibiting the enforcement of the Act. The suit is framed as a class bill brought by the plaintiffs on behalf of "residents, citizens and taxpayers" of Pennsylvania.

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plication, shall not have become naturalized within a period of three years thereafter, except such aliens who have resided continuously in the United States since December thirty-first, one thousand nine hundred and eight, and who have never been convicted of any criminal offence in any court of record, shall register with the Department of Labor and Industry, on forms to be prescribed and furnished by the department; and every such alien becoming a resident of this Commonwealth after the first day of January, one thousand nine hundred and forty, shall, in like manner, register with the department within thirty days after becoming such resident. Such registration shall show the name, age, address, occupation, name of employer, characteristics of appearance, name of wife or husband, if any, of such alien member, names and ages of all children under eighteen (18) residing with him or her, and, if not his or her own, the names of their parents, and such other information and details as the department shall direct.

Section 2. For each original registration and for each annual registration thereafter, the person registered shall pay to the department a registration fee of one dollar ($1.00), and shall receive an alien identification card which he or she shall carry at all times and shall exhibit upon demand by any police officer or agent of the Department of Labor and Industry displaying evidence of his authority.

Section 3. No motor vehicle shall be registered in the name of any alien, nor shall any license to operate a motor vehicle be issued to any alien except those exempted under the provisions of section one of this act, unless such alien shall exhibit an alien identification card for the current registration period.

Section 4. The Department of Labor and Industry shall classify such registrations in such manner as shall best serve

The plaintiff, Davidowitz, is a naturalized citizen of the United States, a resident of Philadelphia and a taxpayer of the Commonwealth of Pennsylvania. The complaint alleges that he is of foreign appearance and speaks English with a noticeable foreign accent and therefore despite his naturalization he will be subjected to constant questioning by police officers, will be compelled to demonstrate constantly that he is not an alien required to carry a registration card, will be unjustly discriminated against, constantly embarrassed and will have to carry proof of his naturalization with him continuously.

The plaintiff, Travaglini, is an alien who has resided in the City of Philadelphia, since his arrival in the United States from Italy in 1920. The complaint sets forth sufficient facts to show that he is not included within the ex-

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the purpose of ready reference, and shall furnish a copy thereof to the Pennsylvania Motor Police. All such records shall be retained for a period of at least three years. The department shall have power to make and enforce rules and regulations to carry into effect and enforce the provisions of this act.

Section 5. Every alien, except those exempted under the provisions of section one of this act, over the age of eighteen (18), who has not declared his or her intention to become an American citizen, and who fails to register as provided in this act within any of the periods required hereby, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than one hundred dollars ($100.00) or to undergo imprisonment for not more than sixty (60) days, or both.

Every alien required to be registered, who shall fail to carry his or her alien identification card or who shall fail or refuse to exhibit the same when properly required to do so, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than ten dollars ($10.00) or to undergo imprisonment for not more than ten (10) days, or both.

Section 6. (a) Summary proceedings under this act must be commenced by the filing of information before a justice of the peace, alderman or a magistrate, which information

emptions of the Act. Travaglini contends that the Act encroaches upon a field confided by the Constitution to the Federal Government and that its enforcement will deny him equal protection of the laws. He states that he will be discriminated against also because by the terms of the Act the Secretary of Revenue must refuse to issue to him either driver's license or owner's certificate for a motor vehicle except upon the production of his registration card and that this will interfere "* * * with his right as a resident alien of * * * Pennsylvania to obtain employment requiring the use and operation of an automobile."

The defendants have filed an answer admitting all well pleaded facts. The plaintiffs have moved for judgment upon the pleadings in accordance with the provisions of Rule 12 (c) of the Federal Rules of Civil Procedure.

JURISDICTION.

As to the Plaintiff, Travaglini.

Jurisdiction is vested in this court by virtue of the provisions of Section 266 of the Judicial Code, as amended, (28

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must be filed in the name of the Commonwealth, and within not less than five days nor more than ten days the magistrate, alderman or justice of the peace shall send by registered mail, to the person charged, at the address of such person, a notice in writing, of the filing of the information, together with a copy thereof, and a notice to appear within ten (10) days of the date of the written notice. If the person named in the information shall not voluntarily appear within ten (10) days of the date of the written notice, a warrant may then be issued and may be served by a peace officer having authority to serve warrants.

(b) The peace officer, after serving such warrant shall take the defendant before a magistrate within the municipality in which the defendant is found, who shall take bail either for the defendant's appearance before the magistrate who issued the warrant or for his appearance for trial in the proper court if a summary hearing is waived.

Section 7. All acts and parts of acts inconsistent herewith are hereby repealed."

U. S. C. A. 380) [3] and of Section 24 (14) of the Judicial Code as amended by 36 Stat. 1092 (28 U. S. C. A. 41 (14)) providing that the District Courts of the United States shall have original jurisdiction of all suits at law or in equity "* * * to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." Hague *v.* Committee for Industrial Organization, — U. S. —.

The Act requires non-exempt aliens to be registered no later than January 1, 1940. Registration of aliens is to commence upon December 1, 1939. The damage threatened to Travaglini therefore is imminent. The action at bar is not brought prematurely. Traux *v.* Raich, 239 U. S. 33, 36; Detroit Creamery Co. *v.* Kinnane, 264 F. 845, decree affirmed Kinnane *v.* Detroit Creamery Co., 255 U. S. 102; Pennsylvania *v.* West Virginia, 262 U. S. 553, 592; Trade Dollar Consolidated Mining Co. *v.* Fraser, 148 F. 585; Louisville & N. R. Co. *v.* Railroad Commission of Alabama, 157 F. 944.

As to the Plaintiff, Davidowitz.

As to the plaintiff, Davidowitz, a naturalized citizen of the United States, his right to reside in the State of Pennsylvania and to move freely within that Commonwealth without unlawful interference by its police is protected by law and the Constitution. His rights as a citizen, however, are not justiciable in the suit at bar. The act is not directed at citizens, either naturalized or native born. If any such were to suffer personal inconvenience, annoyance or embarrassment from enforcement of the Act, they would find

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[3] Section 266 of the Judicial Code as amended provides that three judges, one of whom shall be a Justice of the Supreme Court or a Circuit Judge, shall sit to hear an injunction suit by which it is sought to suspend or restrain the operation of a state statute.

existing law quite adequate to redress their grievances. Well advised, indeed, would be the police officer, attempting to enforce the statute, not to lay hands upon or annoy or harass any law-abiding citizen, regardless of his place of birth. In fact, the possible annoyance and embarrassment generally, which Davidowitz fears, would have to be so carefully guarded against by any one attempting to enforce the Act, that it is questionable whether the Act could be enforced at all. In any event, the point is that Davidowitz, like all other citizens, has no present complaint in this case, cognizable in a United States court. While he is a taxpayer of the Commonwealth of Pennsylvania, as averred and admitted, his complaint does not rest on a taxpayer's equity but on a merely anticipated violation of his rights as a citizen. The complaint, therefore, states no present cause of action in Davidowitz.

THE LAW.

We are of the opinion that the Act is unconstitutional.

The Act Encroaches Upon a Field Reserved to Federal Action.

The Act fails to state or suggest its purpose. The Commonwealth contends that the statute provides for nothing more serious than a census and that its enforcement will be of service to Pennsylvania in administering certain state laws relating to aliens. For example, statutes of Pennsylvania provide that unnaturalized foreign born residents may not fish within the confines of the Commonwealth, P. L. 448, Section 240 (30 Purdon's Pennsylvania Statutes, Annotated 240), or hunt therein, P. L. 359, Article IX, Sections 901, 905 (34 Purdon's Pennsylvania Statutes, Annotated, 901, 905), or be employed upon any public work, P. L. 269, Section 1 (43 Purdon's Pennsylvania Statutes Annotated 151). In our opinion, however, the Act is far more than a census statute. It places conditions upon the right of an alien to reside in Pennsylvania. The alien must register annually and carry his alien registration certificate, simply a card of identity, with him at all times under pain of a drastic penalty. He must produce his registration certifi-

cate upon the demand of any police officer, and if he fails to do so may suffer a penalty nearly as drastic. The alien is thus placed under the constant surveillance of the police power of Pennsylvania, not as any other resident might be placed upon the occasion of the commission of a crime or for the good of the Commonwealth, but simply because he is an alien.

It must be assumed that Travaglini was lawfully admitted to the United States and that his admission was pursuant to the provisions of Federal law. He was admitted therefore as was stated by the Chief Justice in Truax *v.* Raich, *supra*, p. 39, "* * * with the privilege of entering and abiding in the United States, and hence of entering and abiding in any state in the Union." His right to reside in the United States or in any State depends upon and is settled by Federal law. This principle is decisive in the case at bar. It has been enunciated by the Supreme Court several times. In the case of Fong Yue Ting *v.* United States, 149 U. S. 698, 714, arising under the Chinese Exclusion Act of May 5, 1892, 27 Stat. 25, the Supreme Court stated, "Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country and to take all proper means to carry out the system which it provides." In the case of Zakonaite *v.* Wolf, 226 U. S. 272, 275, arising upon appeal from an order of the Secretary of Commerce and Labor based upon the Act of February 20, 1907, 34 Stat. 898, requiring the deportation of an alien who was practicing prostitution, the Supreme Court said, "It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States, and to regulate their coming includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend * * *".

In the more recent case of Arrowsmith *v.* Voorhies, 55 F. (2d) 310, a statute of Michigan (Pub. Acts 1931, No. 241) was under consideration. It provided, among other things, that persons of foreign birth illegally entering the United States should be denied admission, or if detected after

entry should be deported and that unnaturalized foreign born citizens should obtain certificates of legal residence. The court held this statute unconstitutional and stated that by its terms the State of Michigan was attempting to usurp a power vested by the Constitution exclusively in Congress "over the control of aliens and immigration". The court, citing Henderson *v.* Mayor of New York, 92 U. S. 259, and Chy Lung *v.* Freeman 92 U. S. 275, made plain that the Michigan statute could not be justified upon the theory of the exercise of state police power, and said, p. 312, "* * * the power to regulate the terms and conditions under which aliens may live in any of the several states having been given by the Constitution to the federal government, and that government having exercised it, the right of the federal government is paramount and exclusive, and the act under consideration is an unlawful invasion of it."

The decisions of the Supreme Court in the Truax case cited above casts much light upon the correct determination of the question presented for our consideration. In the Truax case it appears that a statute of Arizona, Act of December 14, 1914 (Laws of Arizona, 1915, Initiative Measures, p. 12) provided that any person or corporation employing more than five individuals at one time, of the number employed, should employ no less than 80% qualified electors or native born citizens of the United States. Raich, a native of Austria and an inhabitant of Arizona, but not a qualified elector, brought suit to enjoin the enforcement of this Act upon the ground that it would deprive him of his livelihood. The Supreme Court held the statute unconstitutional upon the ground that its provisions were repugnant to the Fourteenth Amendment. Chief Justice Hughes, delivering the opinion of the Court, said, p. 42, "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the Acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission,

would be segregated in such of the States as chose to offer hospitality."

While the Truax case deals specifically with a limitation imposed by a statute upon the right of an alien to earn a living, its principle is applicable under the circumstances of the case at bar for Travaglini cannot live in Pennsylvania except under the burden of compulsory registration, precisely as Raich could not live in Arizona unless he was permitted freely to earn his livelihood. As stated by the Chief Justice, an alien cannot live where he cannot work. It is equally true that an alien cannot work where he cannot live. In the case at bar as in the Truax case the right of the alien to reside within the state is circumscribed by statute.

The power of the Federal Government to require the registration of aliens is clear. Congress has legislated to some extent in this particular field already. See Act of June 29, 1906, c. 3592, Sec. 1, 34 Stat. 596 (8 U. S. C. A. 106) and Act of February 5, 1917, c. 29, Sec. 12, 39 Stat. 882 (8 U. S. C. A. 148). Congress has also legislated in respect to a large part of the field of alien control, specifying terms and conditions upon which aliens may remain in the United States, the method of their entry and the conditions upon which they may be deported. A considerable portion of Title 8 of the Code of the United States (8 U. S. C. A.) is devoted to these subjects. If existing provisions of the Federal laws are insufficient for the control of aliens, further legislation to such ends is within the discretion of Congress.

The Act does not pertain to a field in which a state may sustain an interest, Truax *v.* Raich, *supra*, pp. 39, 40, such as public employment, Heim *v.* McCall, 239 U. S. 175, ownership in land, Terrace *v.* Thompson, 263 U. S. 197, conservation of natural resources, Patsone *v.* Pennsylvania, 232 U. S. 138, and McCready *v.* Virginia, 94 U. S. 391.

The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without authority to legislate. Therefore it may not be justified as an exercise of the police power of the State of Pennsylvania. It attempts to usurp power confided by the Constitution to the Federal government.

The Act Denies Equal Protection of the Laws to the Alien.

Since the Act impairs the right of the non-exempt alien to reside within the Commonwealth of Pennsylvania, the Commonwealth having legislated in a field reserved to the Federal government, the classification of the Act is as unwarranted as it is unreasonable and the alien is thereby deprived of the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment.

While the prohibition of the Amendment against the denial of equal protection of the laws to "any person", whether citizen or alien, does not require a statute to have equality of operation insofar as every individual may be concerned and such a statute may affect the status of each individual differently in his relationship to its subject matter, nonetheless the classification must be based upon reasonable grounds. The statute at bar cannot be so justified, but, on the contrary, as we have indicated, imposes a burden upon aliens simply because they are aliens. It is based upon the single fact of alienage. Even assuming that the Commonwealth of Pennsylvania possessed power to make the classification under consideration, nonetheless that classification is unreasonable for the Commonwealth would permit citizens and such aliens as are within the exemptions of the statute to pass freely from place to place, but all other aliens, though lawfully within the State, must register, pay annual fees, carry identification cards to be produced on demand, and are subject to drastic penalties if they do not do so. The leading case condemning an analogous classification as unreasonable is the Truax case, but see also *Ex Parte* Kotta, 187 Cal. 27, 31, 32, 200 Pacific 937, a case almost upon all fours with that at bar. In the Kotta case the Supreme Court of California held, relying upon both the Fourteenth Amendment and the Civil Rights Act, that the alien poll tax law of California (Statutes of California, 1921, Ch. 424, pp. 613-624), creating an alien poll tax, was invalid. The court said, p. 31, "Stated very generally, the requirement is for equal protection and security of all, citizens and aliens alike, under like circumstances, in the enjoyment of their personal and civil rights, and in the imposition of burdens, such as penalties, taxes, * * *".

The classification of the statute at bar is not applied even to all aliens, or to such aliens as are ineligible for citizenship or to those who have failed to file a declaration of intention to become citizens. The Act requires registration by an alien who has not filed a declaration of intention to become a citizen or who has filed such a declaration and has failed to become a citizen within three years. That this requirement is arbitrary, unreasonable and capricious, is demonstrated by the provisions of Section 382 of Title 8 of the Judicial Code as amended, 52 Stat. 1247 (8 U. S. C. A. 382), a section of the Federal Naturalization Act, which provides that in order to admit an alien to citizenship it shall appear to the satisfaction of the court that immediately preceding the date of the alien's application for citizenship he "* * * has resided continuously within the United States, for at least five years * * *". It follows therefore that if it is the intent of the Statute to single out persons who are not in sympathy with our institutions and to create a class of them, it fails palpably.

It is not an unreasonable conclusion that the primary purpose of the Act was to force aliens in the State to become naturalized. As much was argued at bar by counsel for the Commonwealth. While naturalization of aliens residing within our borders is a matter to be encouraged, the desire of the applicant for citizenship should be inspired and engendered by his observation of and experience with the living example of true democracy. It must never be compelled by an act of oppression or tyranny. Otherwise, we might well be deluding ourselves in believing that, when the new citizen abjures allegiance to his late sovereign and swears fealty to our government, his act is one of the heart and not of a designing mind, goaded to a subterfuge. Citizenship, in the best sense of that term, rather than the number of naturalizations, is the thing of real importance. Regulation of naturalization rests with the Federal government.

A further purpose of the Legislature may well have been to cause aliens to leave Pennsylvania and enter states where they are not compelled to register or subjected to a registration fee. If so, the statute looks down that dangerous road by which the states of the United States might well reach the unhappy status of competitive nations. The Act

sub judice is not far removed from those statutes which provide for fees, exactions, licenses and even import taxes directed by state against state, their respective goods and inhabitants. For a state to require an alien resident to carry a card of identity could result in any citizen being compelled to prove upon demand that he is not in the class designated. The control of aliens and the conditions of their habitation in the states of the United States must remain in the Federal government.

We wish to make it plain that, in passing upon the questions involved in this case, we have given no effect whatsoever to Travaglini's complaint that, as a non-exempt alien, he would be damaged by being unable to procure an automobile license in Pennsylvania. The provision of the statute in that respect falls necessarily because the Act as a whole falls. However, what the State might do directly in the matter of prohibiting the issuance of automobile licenses to aliens (See Patsone *v.* Pennsylvania, *supra*), it is unnecessary for us either to consider or decide. Accordingly, we express no opinion in such regard and mean to imply none.

We do not deem it necessary to comment upon other contentions expressed at the argument and upon the briefs.

A perpetual injunction will issue against the defendants named, officers of the Commonwealth of Pennsylvania, (*Ex parte* Young, 209 U. S. 123, 155, 161; Philadelphia Company *v.* Stimson, 223 U. S. 607, 620, and Truax *v.* Raich, *supra*, p. 37) enjoining them from enforcing the Act.

November 30, 1939.

(S.) JOHN BIGGS, JR.,
U. S. Circuit Judge.

(S.) CHARLES ALVIN JONES,
U. S. Circuit Judge.

(S.) ALBERT L. WATSON,
U. S. District Judge.

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No. 22

In the Supreme Court of the United States

October Term, 1940

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants

v.

BERNARD DAVIDOWITZ

and

VINCENZO TRAVAGLINI

Appeal from the District Court of the United States for the Middle District of Pennsylvania

BRIEF FOR APPELLANTS

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2 American Jurisprudence, page 476, Section 28 38

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36 Cyc. 828 7

Opinion of the District Court for the Middle District of Pennsylvania, delivered by Judge Biggs on November 30, 1939, reported in 30 Fed. Supp., pp. 470, et seq. 1

7 Ruling Case Law, page 296, Section 272 37

In the Supreme Court of the United States

October Term, 1940

No. 22

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, LYNN G. ADAMS, Commissioner of Pennsylvania State Motor Police, WILLIAM J. HAMILTON, JR., Secretary of Revenue of the Commonwealth of Pennsylvania, WARREN R. ROBERTS, Auditor General of the Commonwealth of Pennsylvania, and F. CLAIR ROSS, State Treasurer of the Commonwealth of Pennsylvania, *Appellants.*

v.

BERNARD DAVIDOWITZ, a Resident, Citizen and Taxpayer of and to the Commonwealth of Pennsylvania, and VINCENZO TRAVAGLINI, a Resident and Taxpayer of and to the Commonwealth of Pennsylvania, for Themselves and on Behalf of Any and All Other Residents, Citizens and/or Taxpayers as May Wish to Join Them as Party Plaintiffs *Appellees.*

Appeal from the District Court of the United States for the Middle District of Pennsylvania

---

BRIEF FOR APPELLANTS

I

REFERENCE TO OFFICIAL REPORTS OF OPINIONS DELIVERED IN COURTS BELOW.

The opinion of the District Court for the Middle District of Pennsylvania, delivered by Judge Biggs on November 30, 1939, is reported in 30 Fed. Supp., pp. 470, et seq.

II

STATEMENT OF GROUNDS OF JURISDICTION.

Jurisdiction is vested in this court by virtue of the provisions of Section 266 of the Judicial Code, as amended, (28 U. S. C. A. 380) and of Section 24 (14) of the Judicial Code, as amended by 36 Stat. 1092 (28 U. S. C. A. 41 (14)).

In their statement as to jurisdiction heretofore printed and filed with the court, they have set forth in detail the facts pertaining to the jurisdiction of this court on appeal and the authorities sustaining jurisdiction. The appellants respectfully request that said statement as to jurisdiction be incorporated in this brief by reference thereto.

III

STATEMENT OF THE CASE.

This is an appeal from the judgment of the District Court for the Middle District of Pennsylvania. The parties hereto are respectively, the appellant, the Commonwealth of Pennsylvania, and the appellee, Vincenzo Travaglini, in an appeal from the judgment of the District Court for the Middle District of Pennsylvania adjudging the Pennsylvania Act of June 21, 1939, P. L. 652 unconstitutional.

A bill in equity was filed by Bernard Davidowitz and Vincenzo Travaglini to enjoin the enforcement of the Act of June 21, 1939, P. L. 652, 35 P. S. §§1801, et seq., on the ground that this State act is unconstitutional and is in violation of the Constitution of the Commonwealth of Pennsylvania, the Constitution of the United States and treaties.

The Commonwealth of Pennsylvania, by its Attorney General, filed an answer. Appellees, by their counsel, filed a motion for judgment on the pleadings.

Bernard Davidowitz is a resident of the City of Philadelphia, a naturalized citizen of the United States of America, and a taxpayer of and to the Commonwealth of Pennsylvania.

Vincenzo Travaglini is an alien subject of the King of Italy residing in the City of Philadelphia. He was born in Abruzzia, Italy, in 1893, came to the United States of America in 1920 and has resided in Philadelphia since his arrival in the United States. He is not naturalized nor has he filed a declaration to become a citizen of the United States of America.

Argument was had before a three-judge court consisting of two members of the Circuit Court of Appeals and one member of the District Court, as provided in section 266 of the Judicial Code, as amended. Judge Biggs on November 30, 1939 filed his opinion holding that the complaint showed no present cause of action in the plaintiff, Bernard Davidowitz; as to the plaintiff, Vincenzo Travaglini, the court assumed jurisdiction and ruled the Act of June 21, 1939, supra, unconstitutional on two grounds, namely:

I. The act encroaches upon a field reserved to Federal action.

II. The act denies equal protection of the laws to aliens.

An application for allowance of an appeal to the United States Supreme Court was presented to the Honorable Albert L. Watson, United States District Judge. On February 8, 1940, Judge Watson ordered and decreed that the appeal be allowed.

In the jurisdictional statement heretofore presented and filed by appellants, the question of jurisdiction was discussed in detail and the applicable authorities were set forth. We, therefore, do not discuss the question of jurisdiction in this brief.

IV

SPECIFICATION OF ERRORS.

1. The District Court erred in holding and deciding that the Alien Registration Act of the General Assembly of the Commonwealth of Pennsylvania, approved June 21, 1939, P. L. 652, was unconstitutional, by stating:

> "We are of the opinion that the Act is unconstitutional."

2. The District Court erred in holding and deciding that the said Alien Registration Act:

> "* * * does not pertain to a field in which a state may sustain an interest, Truax v. Raich, supra, pp. 39, 40, such as public employment, Heim v. McCall, 239 U. S. 175, ownership in land, Terrace v. Thompson, 263 U. S. 197, conservation of natural resources, Patsone v. Pennsylvania, 232 U. S. 138 and McCready v. Virginia, 94 U. S. 391."

3. The District Court erred in holding and deciding that:

> "The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without authority to legislate. Therefore it may not be justified as an exercise of the police power of the State of Pennsylvania. It attempts to usurp power confided by the Constitution to the Federal Government."

4. The District Court erred in holding and deciding that the:

> "* * * purpose of the Legislature may well have been to cause aliens to leave Pennsylvania and enter states where they are not compelled to register or subjected to a registration fee. * * *"

5. The District Court erred in holding and deciding that:

> "* * * The control of aliens and the conditions of their habitation in the states of the United States must remain in the Federal government."

6. The District Court erred in holding and deciding that the act imposed an unreasonable classification and failed to distinguish the Pennsylvania act from the acts in question in the Truax case and Ex Parte Kotta cases.

V

ARGUMENT.

The District Court for the Middle District of Pennsylvania declared the Act of June 21, 1939, P. L. 652, 35 P. S. § 1801, et seq. unconstitutional. This act is commonly known as the Pennsylvania Alien Registration Act, and is set forth at length as a footnote to the opinion of the District Court, from which decision an appeal is taken to this court.

The court below justified its finding that the act was unconstitutional specifically on two grounds:

1. The act encroaches upon a field reserved to Federal action.

2. The act denies equal protection of the laws to aliens.

In discussing the right of the Commonwealth of Pennsylvania to enact the Alien Registration Act and to uphold its constitutionality, our argument will be discussed under these two headings:

1. The act does not encroach upon a field reserved to Federal action.

2. The act does not deny equal protection of the laws to aliens.

The first heading is covered by the first five assignments of error and the second heading by the sixth assignment of error.

1. The Act Does not Encroach Upon a Field Reserved to Federal Action.

As to the first point, it will be observed in reading the District Court's opinion that none of the cases which are cited in support of the court's position justify its conclusion. The cases cited all deal with matters clearly within the field re-

served, under the United States Constitution, to Federal action, that is, to immigration and naturalization. There is clearly a non sequitur for example, between the right of the Federal Government to control immigration, naturalization or interstate and foreign commerce, and the conclusion that the registration of aliens resident within the State, required by the Pennsylvania law, is unconstitutional.

As to the District Court's first position that the act encroaches upon a field exclusively reserved to Federal action, it is evident that the Alien Registration Law does not usurp or conflict with any power granted to the Federal Government.

The Pennsylvania act does not violate Article I, Section 8, Clause 3 of the Constitution of the United States which provides that Congress shall have the power to regulate commerce with foreign nations and among the several states and with the Indian tribes, and to establish a uniform rule of naturalization. The act does not infringe the Federal power to regulate interstate and foreign commerce nor interfere with its power over immigration and naturalization.

Subject to the restrictions contained in this section of the Constitution, each state is supreme, and possesses the exclusive right of regulating its own internal affairs, and in all such matters is supreme so long as it does not conflict with the Federal Constitution. In general, the states may exercise any power possessed by them prior to the adoption of the Constitution unless the exercise of such power is expressly or by necessary implication prohibited thereby or interferes with the exercise of some power delegated to the United States: 36 Cyc. 828. Congress has no general power to enact police regulations operative within the territorial limits of the state. That power has been left with the individual states and cannot be taken from them, either wholly or in part: United States *v.* Cruikshank, 92 U. S. 542, 23 L. Ed. 588 (1876).

The power of the states in this field is unqualified and exclusive, so long as its regulations do not invade the sphere of national sovereignty, obstruct or impede the exercise of any authority which the Constitution has confided to the nation, or deprive a citizen of rights guaranteed to him thereunder.

Is any power of the Federal Government infringed or interfered with? It is conceded by appellants that the Federal Government has the exclusive power to make treaties with foreign nations, to regulate immigration and naturalization, to declare war and to regulate interstate and foreign commerce.

Does the Pennsylvania statute conflict with any of these powers? It does not infringe on the exclusive power of the Federal Government to regulate immigration and naturalization. The power of the State to restrict, limit and control aliens resident within the limits of the State has been upheld by the highest court of our land, as will be more fully discussed.

What does the Pennsylvania act require? It simply requires that certain aliens, who have not declared their intention to become citizens, register, pay $1.00 for such registration, and carry a registration card.

This requirement of registration does not conflict with powers granted to the Federal Government. The State enacted this law in order to secure information in regard to aliens within its own boundaries. The penalties and the carrying of the card are necessary in order to enforce the law and to prevent evasion.

Compliance by an alien with the State statute does not interfere in any way with his compliance with the naturalization statute. If he files his declaration of intention, he is no longer subject to the State Registration Act, even if he does not complete his application.

It is obvious that there is no inconsistency and no conflict between the alien registering with the State and also with the United States. Legislation under the police power of the State will not be stricken down unless it plainly and palpably conflicts with some authority granted to the Federal Government.

In PLUMLEY *v.* MASSACHUSETTS, 155 U. S. 461, 479, 480 (1894), the court stated:

> "We are not unmindful of the fact—indeed, this court has often had occasion to observe—that the acknowledged power of the states to protect the morals, the health, and safety of their people by appropriate legislation, sometimes touches, in its exercise, the line separating the respective domains of national and state authority. But in view of the complex system of government which exists in this country, 'presenting,' as this court, speaking by Chief Justice Marshall, has said, 'the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous state governments, which retain and exercise all powers not delegated to the Union,' the judiciary of the United States should not strike down a legislative enactment of a state—especially if it has direct connection with the social order, the health, and the morals of its people—unless such legislation plainly and palpably violates some right granted or secured by the national Constitution or encroaches upon the authority delegated to the United States for the attainment of objects of national concern."

The Supreme Court has held that a state may pass a law which aids or cooperates with the Federal Government in the exercise of its Federal power.

Thus, in HALTER *v.* NEBRASKA, 205 U. S. 34 (1907), the court sustained a statute of Nebraska which prohibited the use of the national flag for advertising purposes, although the objection was made that the flag was the national emblem, and subject only to the control of the National Government.

Again in GILBERT *v.* MINNESOTA, 254 U. S. 325 (1920), a statute of Minnesota making it a misdemeanor for any person to advocate that citizens of the State refuse to aid or assist the United States in carrying on war, was upheld.

The Supreme Court said:

> "* * * An army is an instrument of government, a necessity of its power and honor, and it may be, of its security. An army, of course, can only be raised and directed by Congress; in neither has the state power, but it has power to regulate the conduct of its citizens, and to restrain the exertion of baleful influences against the promptings of patriotic duty, to the detriment of the welfare of the nation and state. To do so is not to usurp a national power, it it only to render a service to its people, as Nebraska rendered a service to its people when it inhibited the debasement of the flag.
>
> "We concur, therefore, in the final conclusion of the court, that the state is not inhibited from making 'the national purposes its own purposes, to the extent of exerting its police power to prevent its own citizens from obstructing the accomplishment of such purposes.'
>
> "The statute, indeed, may be supported as a simple exertion of the police power to preserve the peace of the state. As counsel for the state say: 'the act under consideration does not relate to the raising of armies for the national defense, nor to rules and regulations for the government of those under arms. It

is simply a local police measure, aimed to suppress a species of seditious speech which the legislature of the state has found objectionable. If the legislature has otherwise power to prohibit utterances of the character of those here complained of, the fact that such suppression has some contributory effect on the Federal function of raising armies is quite beside the question.' * * *"

In the same way, the Pennsylvania Alien Registration Act is a police measure, passed for the purpose of enabling the State to obtain necessary information regarding certain aliens within its borders.

The control of aliens is not within the exclusive power of Congress. Appellants concede that immigration and naturalization under Article I, Section 8, Clause 3, of the United States Constitution are within the exclusive power of Congress, but this provision does not place entire jurisdiction over aliens under Congress, and the states under the police power can place restrictions and limitations upon aliens. State laws restricting aliens have been upheld by the highest courts of our land. Even if control of aliens were within the exclusive power of Congress, and we do not concede that it is, the State still has the right as a local police measure to regulate aliens resident within its borders so long as such regulations are not repugnant to or inconsistent with Federal enactments.

State insolvency laws, liquor laws, state inspection laws and state quarantine laws have been upheld. See the case of INTERNATIONAL SHOE COMPANY *v.* PINKUS, 278 U. S. 261, (1929), 73 L. Ed. 318, where the court held that the Bankruptcy Act only suspends conflicting insolvency laws. See also WALKER *v.* EMERICH, Appellant, 300 Pa. 9 (1930), where the state insolvency acts were upheld. Further, in the case POTTS, Appellant *v.* SMITH MFG. CO., 25 Pa. Super. Ct. 206 (1904), the court in its opinion stated as follows:

> "* * * It is an established doctrine that the powers granted to congress are only exclusive of the powers upon the same subject existing in the states, when an exclusive power is expressly delegated to congress, or there is such incompatibility in the exercise of it by the states as to produce the necessary conclusion, that it is exclusive in congress. Where there is no such exclusive grant to congress or such incompatibility concurrent power remains with the states. Where, however, in the case of concurrent powers congress has exercised its power on a given subject, the control of the state over that subject is by such action of congress prohibited. * * *"

It should be noted that Pennsylvania passed its law to register aliens on June 21, 1939, but it was not until June 28, 1940, that Congress passed its act entitled "Alien Registration Act of 1940". The Pennsylvania act does not in any way restrict aliens coming into the State or expel them from the State. Until there was an existent Federal Act requiring aliens to register, there was no conflict with the general power delegated to the Federal Government covering the subject of naturalization and immigration. See also NEW YORK, NEW HAVEN, & HARTFORD RAILROAD COMPANY *v.* PEOPLE OF STATE OF NEW YORK, 165 U. S. 628, (1897) where the court stated:

> "According to numerous decisions of this court (some of which are cited in the margin) sustaining the validity of state regulations enacted under the police powers of the state and which incidentially affected commerce among the states and with foreign nations, it was clearly competent for the state of New York, in the absence of national legislation covering the subject, to forbid under penalties the heating of passenger cars in that state by stoves or furnaces kept inside the cars or suspended therefrom, although such cars may be employed in

interstate commerce. While the laws of the states must yield to acts of Congress passed in execution of the powers conferred upon it by the Constitution (Gibbons v. Ogden, 22 U. S. 9 Wheat 1, 211 [6:23, 73], the mere grant to Congress of the power to regulate commerce with foreign nations and among the states did not, of itself and without legislation by Congress, impair the authority of the states to establish such reasonable regulations as were appropriate for the protection of the health, the lives, and the safety of their people. * * *"

If and when Congress acts, the State act is not unconstitutional but is merely in abeyance, except in such cases where Congress and the State have concurrent jurisdiction. There is no question about the right of the State to act in the absence of Federal legislation. The Alien Registration Act was constitutional when passed, since it does not impinge on any power granted to Congress for it does not relate to the entrance of aliens into the State nor to their deportation, nor does it interfere in any way with naturalization or with foreign or interstate relations. It represents simply a local police measure aimed to obtain information regarding aliens resident within the State's borders for the protection of the citizens, law-abiding aliens and property. The only question is whether the State act is in abeyance or whether the State and Federal Government have concurrent jurisdiction to register aliens for the protection of inhabitants and property. Neither the State nor the Federal acts are oppressive measures, but both are designed merely to obtain information and permanent records of certain aliens resident within their respective borders. The law-abiding alien has nothing to fear, but the public as a whole has a right to demand protection from the enemy alien. The only way for the State to afford such protection is by way of obtaining the necessary information relative to aliens resident within its borders. Thus, the Pennsylvania Alien

Registration Act should be upheld since control or restriction of aliens is not within the exclusive power of Congress and the State under its police power has the right to register aliens in order to protect its citizens, law-abiding aliens and property.

2. The Act Does Not Deny Equal Protection of the Laws to Aliens.

As to the second point, the District Court held that "The act denies equal protection of the laws to aliens". As to this, we say generally that our contention is that the Pennsylvania Alien Registration Act is clearly within the police power reserved to the several states and, therefore, does not violate the denial of the Due Process Clause of the Fourteenth Amendment to the Federal Constitution.

As to this question of police power and denial of due process, may we say parenthetically that the District Court's opinion criticised the Pennsylvania act because it does not state any purpose. It must be borne in mind that the purpose of the statute must be obtained from its provisions rather than from any expressed declaration of purpose in the act itself, although the practice has presently been to state in a great deal of legislation, both Federal and state, the purpose for the passage of the act. The provisions of such statutes may be declared unconstitutional in spite of the efforts of the draftsmen to support the statute by declaring the purposes which fall clearly within the Constitution.

From the act itself, it is apparent that the purpose is to secure information and statistics, as a census will do, in addition to registering aliens, which will aid the Commonwealth of Pennsylvania in not only obtaining necessary data regarding residents within its borders but will assist in the formulation and administration of laws governing these subjects.

Pennsylvania, by this enactment, required all aliens, with certain exceptions, to be registered.

The state not only has the authority but it also has the obligation to enact police laws, especially to protect lives and property within its limits. In protecting life and property, it is very important that the state should know who has declared an intention to become a citizen of the United States and who has not done so. The alien who does not declare his intention to become a citizen might possibly be a blackhander, a spy or a member of a Fifth Column. He may be concealing his identity, his whereabouts and activities. Though the alien's declaration of intention to become a citizen is not a guaranty of loyalty, in most cases it is prompted by a desire to become an American and to assume the obligations of citizenship.

Pennsylvania is a great industrial state and has a large foreign population, much of which is employed in its industries. The State has the duty of guarding its great industries, its steel and ammunition plants and other factories whose products are essential in war. Two of the three armor plate plants in the United States are located in Pennsylvania.

The Federal Government has no general police power. Except in the case of war or other emergency, it makes no effort to protect lives and property generally within the state.

It is significant that the Pennsylvania Alien Registration Law was enacted on June 21, 1939, and that the Act of Congress entitled the "Alien Registration Act of 1940" was enacted June 28, 1940. The Pennsylvania act is not as drastic as the Federal act, and does not include fingerprinting. It may be noted that on August 5, 1940, President Roosevelt, in a message to the Governors of the States meeting with the officials of the United States Department

of Justice in Washington, suggested that Congress and the state legislatures should enact companion laws to deal with all forms of Fifth Column activities. As the Federal Government has not yet taken any measures under the war power to protect essential industries in Pennsylvania or any of the states, this duty devolves entirely upon the state. It is essential that the states retain the power and right to determine its own public policy, and what measures are necessary for its protection and the safety, peace and good order of its people.

In TERRACE *v.* THOMPSON, 263 U. S. 197 (1923), the State of Washington had enacted a law which provided that:

> "The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, * * *."

This statute was attacked as denying the Due Process of Law and the Equal Protection of the Laws, but it was sustained.

In the opinion of the Supreme Court, Mr. Justice Butler said:

> "* * * The 14th Amendment, as against the arbitrary and capricious or unjustly discriminatory action of the state, protects the owners in their right to lease and dispose of their land for lawful purposes, and the alien resident in his right to earn a living by following ordinary occupations of the community, but it **does not take away from the state those powers of police that were reserved at the time of the adoption of the Constitution.** Barbier v. Connolly, 113 U. S. 27, 31, 28 L. ed. 923, 924, 5 Sup. Ct. Rep. 357; Mugler v. Kansas, 123 U. S. 623, 663, 31 L. ed. 205, 211, 8 Sup. Ct. Rep.

273; Powell v. Pennsylvania, 127 U. S. 678, 683, 32 L. ed. 253, 256, 8 Sup. Ct. Rep. 992, 1257; Re Kemmler, 136 U. S. 436, 449, 34 L. ed. 519, 524, 10 Sup. Ct. Rep. 930; Lawton v. Steel, 152 U. S. 133, 136, 38 L. ed. 385, 388, 14 Sup. Ct. Rep. 499; Phillips v. Mobile, 208 U. S. 472, 479, 52 L. ed. 578, 581, 28 Sup. Ct. Rep. 370; Hendrick v. Maryland, 235 U. S. 610, 622, 623, 59 L. ed. 385, 390, 391, 35 Sup. Ct. Rep. 140. **And in the exercise of such powers the state has wide discretion in determining its own public policy and what measures are necessary for its own protection and properly to promote the safety, peace, and good order of its people.''** (Boldface ours)

It is true that after an alien is admitted into the United States, he has the right to enter and to reside in any state. This right is included in the equal protection of the laws guaranteed by the fourteenth amendment.

The Pennsylvania statute, however, does not deny such rights. The alien is free to enter Pennsylvania, move freely about or reside in this state or depart therefrom. He is allowed to own property, secure employment, engage in business, have access to the courts, and is entitled to equality in taxation with residents. The state makes no requirement except that if he resides here, he must register and pay a fee of $1.00 per year and carry a card showing his registration. Except for this his movements and activities are not subject to any different supervision from those of a citizen. He is free to enter and travel about and depart without paying the dollar. The dollar is collected only in case he resides here.

He is not charged for the privilege of residing in this state. It is only residents who are required to register, and the dollar helps to defray the cost of registration.

If the law is a proper exercise of the police power, the requirement of the fee will not infringe any Federal right. This fee is no more than is required to pay the cost of administering the law.

The contention of the court that the purpose of the act is to induce aliens to seek naturalization, is immaterial. Many Americans believe that an alien who comes to this country and earns his living here and derives the benefit of our Government, should also assume its obligations by becoming a citizen.

But the Pennsylvania statute does not require the alien to become naturalized. As soon as the alien has filed his first papers, i. e., declares his intention to become a citizen, the act no longer applies to him. He passes beyond the scope of the statute, whether or not he becomes naturalized later. Surely the necessity of paying $1.00 a year and carrying a registration card would furnish no substantial inducement to an alien to change his citizenship or his residence.

An infinitely greater inducement to become a citizen was furnished by the Oregon statute sustained by the Supreme Court, which prohibited an alien from owning land. Other states have passed laws conferring the right to vote upon an alien who has taken out his first papers. These statutes may be said to furnish an incentive to an alien to become naturalized.

The classification of aliens who have declared an intention to become citizens, has been upheld by the Supreme Court of the United States. This same distinction was made in a Washington law and upheld in TERRACE *v.* THOMPSON (1923), supra.

> "The rights, privileges, and duties of aliens differ widely from those of citizens; and those of alien

declarants differ substantially from those of nondeclarants. Formerly in many of the states the right to vote and hold office was extended to declarants, and many important offices have been held by them. But these rights have not been granted to nondeclarants. By various acts of Congress, declarants have been made liable to military duty, but no act has imposed that duty on nondeclarants * * * The aliens formally declared bona fide intention to renounce forever all allegiance and fidelity to the sovereignty to which he lately has been a subject, and to become a citizen of the United States and permanently to reside therein, markedly distinguishes him from an ineligible alien, or an eligible alien who has not so declared.

"* * * Eligible aliens who have not declared their intention to become citizens are included, and the act provides that unless declarants be admitted to citizenship within seven years after the declaration is made, bad faith will be presumed. This leaves the class permitted so to own land made up of citizens and aliens who may, and who intend to, become citizens, and who in good faith have made the declaration required by the naturalization laws. The inclusion of good-faith declarants in the same class with citizens does not unjustly discriminate against aliens who are ineligible, or against eligible aliens who have failed to declare their intention. The classification is based on eligibility and purpose to naturalize. * * * And we think it is clearly within the power of the state to include nondeclarant eligible aliens and ineligible aliens in the same prohibited class. Reasons supporting discrimination against aliens who may, but will not, naturalize, are obvious."

This opinion of the Supreme Court states the grounds for placing aliens who have not declared their intention to become citizens in a separate class and answers the contention that the classification is unreasonable.

An alien who has declared his intention to become a citizen, makes a public record showing the length of time that he has been in the United States, where he resided in the old country and where he resides in this country, together with other facts. His declaration of intention states that he will renounce any allegiance to any foreign country and will swear allegiance to the United States. It shows his faith in and adherence to the principles of this Government.

In contrast, the criminal alien ordinarily will not file a declaration of intention and disclose his place of residence and his antecedents in the foreign country.

In addition, an alien who has not declared his intention to become a citizen, is not subject to military service under the laws of the United States.

Under the Pennsylvania statute the criterion is not foreign birth, but the intention to become a citizen of the United States.

An immigrant who has taken out his first papers, stands on an equality with a native-born American.

In COCKRILL *v.* CALIFORNIA, 268 U. S. 258, 262, (1925) the Supreme Court said:

> "* * * The equal protection clause does not require absolute uniformity, or prohibit every distinction in the laws of the state between ineligible aliens and other persons within its jurisdiction. The state has a wide discretion and may classify persons on bases that are reasonable and germane, having regard to the purpose of the legislation. Truax v. Corrigan, 257 U. S. 312, 337, 66 L. ed. 254, 265, 28 A. L. R. 375,

42 Sup. Ct. Rep. 124. This is well illustrated by the Alien Land Laws. Terrace v. Thompson, supra, 218; Porterfield v. Webb, supra, 233; Webb v. O'Brien, supra, 324; Frick v. Webb, supra, 333. * * *"

While an alien is not absolutely entitled to the privileges and immunities of a citizen, strictly as such, under the fourteenth amendment, yet he is a "person" to whom the state cannot deny the equal protection of the laws. This clause is universal in its application to all persons within the territorial jurisdiction, without regard to any differences of race, color, or nationality, as instanced in many cases, some of which we present as follows:

BARBIER *v.* CONNOLLY, 113 U. S. 27, 28 L. Ed. 923 (1885)
TERRACE *v.* THOMPSON, 263 U. S. 197, 62 L. Ed. 255 (1923)
FRICK *v.* WEBB, 263 U. S. 326, 68 L. Ed. 323 (1923)
WEBB *v.* O'BRIEN, 263 U. S. 313, 68 L. Ed. 318 (1923)
HEIM *v.* MCCALL, 239 U. S. 176, 60 L. Ed. 206 (1915)
TRUAX *v.* RAICH, 239 U. S. 33, 60 L. Ed. 131 (1915)
PATSONE *v.* PENNSYLVANIA, 232 U. S. 138, 58 L. Ed. 539 (1914).
OHIO EX REL. *v.* DECKEBACH, 274 U. S. 392, 71 L. Ed. 1115. Anno. 24 A. L. R. 1120 (1927)
STATE *v.* RHEAUME, 80 N. H. 319, 116 A. 758. See also 2 Am. Juris., Sec. 10.

We briefly refer to these cases in order to show that the fourteenth amendment, in its application to the problem involved, has not been so interpreted by the courts as to warrant the contentions of the plaintiffs.

BARBIER *v.* CONNOLLY, supra, Mr. Justice Field held that the fourteenth amendment is not designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people.

On page 31 he said:

> "The 14th Amendment, in declaring that no State 'Shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoilation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. * * *"

TERRACE *v.* THOMPSON, supra, held that the fourteenth amendment to the Federal Constitution does not take from the states those police powers that were reserved at the time of the adoption of the Constitution.

Each state has, in the absence of a treaty provision to the contrary, the power to deny aliens the right to own land within its borders. Mr. Justice Butler said, on page 218:

> "State legislation applying alike and equally to all aliens, withholding from them the right to own land, cannot be said to be capricious, or to amount to an arbitrary deprivation of liberty or property, or to transgress the due process clause.
>
> "This brings us to a consideration of appellants' contention that the act contravenes the equal protection clause. That clause secures equal protection to all in the enjoyment of their rights under like circumstances. Re Kemmler, 136 U. S. 436, 449, 54 L. ed. 519, 524, 10 Sup. Ct. Rep. 930; Giozza v. Tiernan, 148 U. S. 657, 662, 37 L. ed. 599, 601, 13 Sup. Ct. Rep. 721. But this does not forbid every distinction in the law of a state between citizens and aliens resident therein. In Truax v. Corrigan (257 U. S. 312, 66 L. ed. 254, 27 A. L. R. 375, 42 Sup. Ct. Rep. 124), this court said (p. 337):
>
> "'In adjusting legislation to the need of the people of a state, the legislature has a wide discretion, and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable,—**that classification of persons is constantly necessary.** * * * Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation; but it must regard real resemblances and real differences between things and persons, and class them in accordance with their pertinence to the purpose in hand.'

> "The rights, privileges, and duties of aliens differ widely from those of citizens; and those of alien declarants differ substantially from those of nondeclarants. Formerly in many of the states the right to vote and hold office was extended to declarants, and many important offices have been held by them. But these rights have not been granted to nondeclarants. * * *" (Boldface supplied)

FRICK *v.* WEBB, supra, declared constitutional the California act denying to ineligible aliens the right to acquire stock in a corporation holding land for agricultural purposes; Mr. Justice Butler in his opinion held that this act did not deny the equal protection of the laws in violation of the fourteenth amendment.

WEBB *v.* O'BRIEN, supra, held that a California act which limited the privilege of ineligible aliens to acquire real property within the state to that prescribed by a treaty, was not in conflict with the fourteenth amendment.

HEIM *v.* MCCALL, supra, decided that the employment of citizens only on public works in New York was not a violation of this amendment.

TRUAX *v.* RAICH, supra, declared an Arizona statute which provided that every employer of more than five workers at any one time, regardless of the kind or class of work or the sex of workers, shall employ not less than eighty percent qualified electors or native-born citizens of the United States, was invalid as a denial of constitutional provision as to equal protection of the laws. Neither could it be justified, as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. The Court said:

"* * * It must also be said that reasonable classification implies action consistent with the legitimate interests of the state, and it will not be disputed that these cannot be so broadly conceived as to bring them into hostility to exclusive Federal power. * * *"

The Pennsylvania statute involves a reasonable classification in that it proposes merely to obtain information regarding certain aliens resident within its borders by means of registration and does not at all impinge on Federal jurisdiction over immigration and naturalization or inhibit the alien in the range of employment.

PATSONE *v.* PENNSYLVANIA, supra, was a case which involved a Pennsylvania statute, making it unlawful for aliens to kill wild birds or animals except in defense of person or property; made it unlawful to possess shotguns or rifles. The plaintiff in that case was found guilty, under this Act of Assembly, and he successively appealed to the Superior Court and the Supreme Court of Pennsylvania, and finally the case came before the Supreme Court of the United States, on the ground that the statute contravened the fourteenth amendment to the Federal Constitution. Mr. Justice Holmes, in affirming the decision of the State courts, said:

"Under the 14th Amendment the objection is twofold; unjustifiably depriving the alien of property, and discrimination against such aliens as a class. But the former really depends upon the latter, since it hardly can be disputed that if the lawful object, the protection of wild life (Geer v. Connecticut, 161 U. S. 519, 40 L. ed. 793, 16 Sup. Ct. Rep. 600), warrants the discrimination, the means adopted for making it effective also might be adopted. The possession of rifles and shotguns is not necessary for other purposes not within the statute. It is so peculiarly appropriated to the forbidden use that if

such a use may be denied to this class, the possession of the instruments desired chiefly for that end also may be. The prohibition does not extend to weapons such as pistols that may be supposed to be needed occasionally for self-defense. * * *

"The discrimination undoubtedly presents a more difficult question. But we start with the general consideration **that a state may classify with reference to the evil to be prevented**, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. Lindsley v. National Carbonic Gas Co. 220 U. S. 61, 80, 81, 55 L. ed. 369, 378, 379, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912 C, 160. The state 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' Central Lumber Co. v. South Dakota, 226 U. S. 157, 160, 57 L. ed. 164, 169, 33 Sup. Ct. Rep. 66; Rosenthal v. New York, 226 U. S. 260, 270, 57 L. ed. 212, 216, 33 Sup. Ct. Rep. 27; L'Note v. New Orleans, 177 U. S. 587, 44 L. ed. 899, 20 Sup. Ct. Rep. 788. See further Louisville & N. R. Co. v. Melton, 218 U. S. 36, 54 L. ed. 921, 47 L. R. A. (N. S.) 84, 30 Sup. Ct. Rep. 676. The question therefore narrows itself to whether this court can say that the Legislature of Pennsylvania was not

warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. Barrett v. Indiana, 229 U. S. 26, 29, 57 L. ed. 1050, 1052, 33 Sup. Ct. Rep. 692.

"Obviously the question, so stated, is one of local experience, on which this court ought to be very slow to declare that the state legislature was wrong in its facts. Adams v. Milwaukee, 228 U. S. 572, 583, 57 L. ed. 971, 977, 33 Sup. Ct. Rep. 610. * * *" (Boldface ours)

OHIO EX REL *v.* DECKEBACH, supra, was a case involving an ordinance forbidding the issuance of licenses for poolrooms to aliens. Mr. Justice Stone said, on page 396:

"The objections to the constitutionality of the ordinance are not persuasive. Although the 14th Amendment has been held **to prohibit plainly irrational discrimination against aliens. * * * it does not follow that alien race and allegiance may not bear in some instances such a relation to a legitimate object of legislation as to be made the basis of a permitted classification.** Patsone v. Pennsylvania, 232 U. S. 138, 58 L. ed. 539, 34 Sup. Ct. Rep. 281; Crane v. New York, 239 U. S. 195, 198, 60 L. ed. 218, 226, 36 Sup. Ct. Rep. 85; Terrace v. Thompson, 263 U. S. 197, 68 L. ed. 255, 44 Sup. Ct. Rep. 15; Porterfield v. Webb, 263 U. S. 225, 68 L. ed. 278, 44 Sup. Ct. Rep. 21; Webb v. O'Brien, 263 U. S. 313, 68 L. ed. 318, 44 Sup. Ct. Rep. 112; Frick v. Webb, 263 U. S. 326, 68 L. ed. 323, 44 Sup. Ct. Rep. 115; Cockrill v. California, 268 U. S. 258, 69 L. ed. 944, 45 Sup. Ct. Rep. 490; cf. McCready v. Virginia, 94 U. S. 391, 24 L. ed. 248.

* * * * *

"It is enough for present purposes that the ordinance, in the light of facts admitted or generally assumed, does not preclude the possibility of a rational basis for the legislative judgment and that we have no such knowledge of local conditions as would enable us to say that it is clearly wrong. Ft. Smith Light & Traction Co. v. Board of Improvement. * * *

"Some latitude must be allowed for the legislative appraisement of local conditions * * *" (Boldface ours)

With respect to aliens, the Supreme Court of New Hampshire set out the relationship of an alien to the asylum Government in STATE *v.* RHEAUME, 80 N. H. 319, Vol. 116, Atl. 758, a case which involved the possession of firearms by aliens without a permit. A discrimination made in the statute between the citizens and the non-citizens was upheld, the court stating:

"* * * The evident intent of the legislature was to promote the public welfare by establishing a system by which a record should be kept, open to the inspection of the public authorities, of the location of dangerous explosives and firearms, and to limit their possession in irresponsible hands. It was an incident to such a system that a classification should be made, based on domicile, allegiance, duty, habit, temperament, and other characteristics which distinguish the citizen and applicant for citizenship from the alien who has manifested no desire or intention to bind himself to support the government.

"Citizens as a class have more settled domiciles, and are better known to the local police officials, while the sojourn of aliens in this country, in theory, and usually in practice, is temporary, and their

abode, while here, capricious and uncertain. Citizens by means of taxation bear the expense of the government and of police protection, while the alien does not necessarily pay taxes or share any part of the public burden. Native citizens are justly presumed to be imbued with a natural allegiance to their government which unnaturalized aliens do not possess. The former inherit a knowledge and reverence for our institutions while the latter as a class do not understand our customs or laws, or enter into the spirit of our social organization. Or, passing more directly to the use of firearms, the citizen has an obligation to defend the state, while the alien has none. The citizen is required to assist in maintenance of order, the enforcement of law, and the arrest of wrongdoers in some instances. It is clear that there exists a reasonable and substantial basis for the classification. It seems reasonable to class with native citizens persons who have been naturalized or who have legally declared their intention to become citizens, since, under the naturalization laws, they have declared or indicated their purpose to declare their allegiance to our Constitution, have submitted evidence of their attachment to our institutions, have adopted a place of residence, and have assumed or contemplated the full assumption of the duties of citizenship. * * *"

It may be stated as a general rule that all aliens residing in the United States for a shorter or longer time are entitled, so long as they are permitted by the Government to remain in the country, to the safeguards of the Constitution, to the protection of the laws, in regard to their rights of person and property, and to their civil and criminal responsibility. These provisions of the Constitution which

are applicable to, and may be invoked by aliens, can be determined only from the terms of the instrument itself.

Certain provisions of the Constitution are couched in such unqualified and absolutely prohibitory terms that it is not open to serious doubt that aliens may, in proper cases, successfully invoke their protection. Of such character are the prohibition of Congress against a suspension of the privilege of habeas corpus except in time of public danger; the prohibition against the passage of bills of attainder or ex post facto laws; the provision that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, or be twice put in jeopardy, or be compelled in any criminal case to be a witness against himself; the provision securing the right to defendants to have compulsory process for obtaining witnesses in their favor; and the guaranty against excessive bail and fines, and cruel and unusual punishment. According to the weight of authority, an alien is also entitled to freedom from unreasonable searches and seizures.

Certain rights are denied to aliens as several constitutional guaranties are, by the terms of the instrument insured only to citizens. Under these clauses an alien may not successfully invoke equal privileges and immunities. Of this class are the provisions that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," and that "no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States."

Aliens obviously are not within the protection of a constitutional provision that the people have at all times the right to alter their form of government in such manner as they may think expedient. Nor does the constitutional right of freedom of speech include the right of aliens to pub-

lish disloyal, scurrilous, or abusive matter concerning the form of government, or matter which fosters opposition to organized government.

Guaranty of due process is given to alien inhabitants of a state who are entitled to the guaranty of the fourteenth amendment that no state shall "deprive any person of life, liberty, or property without due process of law." It is likewise well-settled that an alien may demand that he be accorded due process by the Federal Government.

Equal protection of the laws is also afforded alien inhabitants of a state under the guaranty of the fourteenth amendment that no state shall "deny to any person within its jurisdiction the equal protection of the laws." It must be observed, however, that this constitutional guaranty of the equal protection of the law applies only to aliens within the jurisdiction of the United States.

In general aliens are under no special constitutional protection which forbids a classification otherwise justified simply because the limitation of the class falls along the lines of nationality. That would be requiring a higher degree of protection for aliens as a class than for similar classes of American citizens. Broadly speaking, the difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of police power.

The question whether a mere privilege or a right is involved is sometimes apparently made the criterion of the power to discriminate against aliens, such power to discriminate being affirmed in the former case, but denied in the latter. This criterion serves where, as in case of a license to practice law, it is clear that a privilege, and not a natural right, is involved, but it is frequently unsatisfactory if not misleading, as practical test, since there is a tendency to

characterize what is inherently and in its origin, at least a right, as a mere privilege because of the necessity or desirability, evinced by the statute or ordinance itself, to restrict, or impose conditions upon its exercise.

The question fairly arises, how have these plaintiffs been denied the equal protection of the law? To ask the question answers it. It would be a startling proposition that there could not be a classification for governmental purposes, if all of the group are included in such classification, excluding others not similarly situated, for as said by Mr. Justice Stone in OHIO EX REL. *v.* DECKEBACH, supra, "It does not follow that alien race and allegiance may not bear in some instances such relation to a legitimate object of legislation as to be made a permitted classification."

It is too broad an interpretation of the rights of aliens to say that they have the same rights as citizens under the fourteenth amendment to the Federal Constitution. The law is definitely settled that aliens can be classified as a group for purposes of legislation, and numerous restrictions on aliens have thus been upheld.

Licenses may be restricted to citizens. However, a statute which arbitrarily prohibits aliens from engaging in ordinary kinds of business is unconstitutional: STATE *v.* MONTGOMERY, 94 Mo. 192; 47 Atl. 165.

But discrimination against aliens in the granting of licenses to maintain a business which, though lawful, is subject to abuse and likely to become injurious to the community (ANTON *v.* VAN WINKLE, 297 Fed. 340 (1924)) is based upon a lawful legislative classification, since it is not unreasonable to suppose that the foreign-born, whose allegiance is first to their own countries, and whose ideals of governmental environment and control have been engendered and formed under entirely different regimes and political systems, have not the same inspiration for the public weal, and are not as

well disposed toward the United States as those who, by citizenship, are a part of the government itself: STATE EX REL. *v.* CARREL, 99 Ohio 285; 124 N. E. 129 (1919).

Thus, there is no question but that a state's denial to persons not citizens of the United States, of the right to obtain licenses to sell intoxicating liquors, is not an unlawful discrimination against aliens or an abridgement of their rights within the prohibition of the fourteenth amendment of the Federal Constitution: TRIMBLE'S LICENSE, 41 Pa. Super. Ct. 370 (1909).

As to soft drinks, there is some difference of opinion. However, MILLER *v.* NIAGARA FALLS, 207 App. Div. 798, 202 N. Y. Supp. 549, held that a city ordinance forbidding such licenses to aliens was constitutional.

In GEORGE *v.* PORTLAND, 235 Pac. 681 (Oregon case), a regulation of aliens by way of licensing pawnbrokers was declared constitutional. In ASAKURA *v.* SEATTLE, 122 Wash. 81; 210 Pac. 20, reversed in 265 U. S. 332; 68 L. Ed. 1041 (1924), the court did not uphold an ordinance denying licenses for transaction of pawnbroker's license to other than a citizen because such ordinance violated a treaty with Japan.

Discrimination against aliens in the regulation of natural resources is universally upheld, inasmuch as the state, in its sovereign capacity, holds such resources in trust for its people, and may, therefore, through its legislative power, lawfully limit and restrict the right of enjoyment to its own citizens. Thus, an ordinance in a city denying the right to aliens to use the highways as a common carrier was held valid in GIZZARELLI *v.* PRESBREY, 44 R. I. 333; 117 Atl. 359. Note also that the right to a pilot's license denied by statute to aliens was held constitutional: STATE *v.* AMES, 47 Wash. 328; 92 Pac. 137.

The right to bear arms has, in certain cases, been restricted to citizens. It is generally held that where the legislature is

dealing with subject-matters of great inherent danger to the public, a classification may be made, based on domicile, allegiance, duty, habit, temperament, and other characteristics which distinguish the citizen and applicant for citizenship from the alien who has manifested no desire or intention to bind himself to support the Government. Upon this theory, it has been held that a statute forbidding resident aliens to own or possess firearms of a character which may be readily concealed on the person, is within the police power of the state. For the same reason, a statute prohibiting the killing of any wild bird or animal by unnaturalized, foreign-born residents, except in protection of person or property, and forbidding their possession of firearms for the purpose named, has been held not to be a denial of the equal protection of the laws: PATSONE *v.* PENNSYLVANIA, 232 U. S. 138; 58 L. Ed. 539 (1914) and EX PARTE RAMERIZ, 193 Cal. 633; 226 Pac. 914.

Right of guardianship has been limited to citizens. The equal protection of the laws is not unconstitutionally denied to an alien parent seeking appointment as guardian of his American-born child, by a statute denying the right of guardianship to an alien, where the estate consists, in part, of real property: RE FUJIMOTS, 130 Wash. 188; 226 Pac. 505.

The right of administration also has been limited to citizens. Under the common law, a non-resident, even an alien, might be named and appointed executor. Nevertheless, a statute denying to an alien the right to act as administrator is a valid exercise of the legislative power: RE MULFORD, 217 Ill. 242; 75 N. E. 345 (1905).

As discussed, supra, **the constitutionality of limiting employment on public works to citizens has been upheld.** However, if work sought to be controlled by the Government is private, and the public welfare is in no way involved, it is clear that the legislature cannot deny to the individual employer the right to employ aliens. In such case it is held that

to deprive aliens, merely because of their alienage, of the opportunity of earning a livelihood, would be equivalent to the assertion of the right to deny them entrance and abode in the state: JUNIATA LIMESTONE CO. *v.* FAGLEY, 187 Pa. 193 (1898). On the other hand, if the work, though private, is such that the exclusion of aliens is, in fact, necessary to the protection of the public welfare, such exclusion is within the police power. Where the work is public and, therefore, wholly subject to the police power, the exclusion of aliens need not be shown to sustain any relation to the public welfare in order to be valid (TRUAX *v.* RAICH, supra; PEOPLE *v.* CRANE, 214 N. Y. 154, affirmed 239 U. S. 195; 60 L. Ed. 226 (1915)), and a statute prohibiting the employment of aliens on public work by a state, municipality, or contractor does not unconstitutionally discriminate against aliens. It should be observed, however, that the state, though authorized to exclude aliens from employment on public works in favor of citizens, may not exclude aliens from the enjoyment of those works after completion: PEOPLE *v.* CRANE, supra.

Restrictions on aliens have been successfully imposed to curtail certain miscellaneous rights. For example, **the right to vote**, though generally limited to citizens, in some instances has been granted to aliens under certain conditions. It is an unquestionable principle of sound national policy that as the supreme power rests wholly in the citizens of the country, so the exercise of it, or of any branch of it, ought to be delegated to none but citizens, and only to citizens. In view of this principle, it is provided by statute or constitution in most states that none but citizens shall be allowed to vote. In some states, however, it seems that the elective franchise is granted by the Constitution to all male inhabitants with certain qualifications as to residence, age, etc., and in construing these statutes, some courts have held that aliens possessing the other qualification might vote, while other courts have treated the word "inhabitants" as synonymous with citi-

zens: COOK *v.* STATE; 90 Tenn. 407; 16 S. W. 471; 2 AM. JURIS., p. 472, Sec. 18.

The right to hold public office is generally limited to citizens. At the very foundation of all independent popular governments lie the principles, the enforcement of which needs the aid of neither statutory nor constitutional enactments or restrictions, that the government is instituted by the citizens, and that it is to be administered, and its powers and functions exercised, only by them and through their agency. Viewed in the light of these principles, it is obvious that an alien is ineligible to hold public office unless specially authorized by statute. So, if a person who is not an elector because he is an alien attempts to exercise the functions of a public office, the courts, on proper proceedings being instituted for the purpose, will oust him. While there seems to be no doubt regarding the ineligibility of an alien to hold public office, there is a conflict among the cases as to the right of an alien to be elected to a public office and to hold the same after he has become qualified by becoming naturalized or declaring his intention to become a citizen. One line of authorities holds that the qualification of a candidate for public office should be consummate at the time of his election, and that it will not do that it becomes so before the time for him to qualify and enter upon the duties of his office. Other authorities maintain that the question of eligibility pertains to holding office and not to being elected to office, and, therefore, that if an alien is elected to office and becomes naturalized before the time to enter upon the duties of his office, he is qualified to hold office: 2 AMERICAN JURISPRUDENCE, page 473, Sec. 20.

The right to serve as a juror is the special prerogative of citizens. Aliens are disqualified for jury duty, but a party to an action, to avail himself of this objection must ordinarily take it by challenge, and not at a later stage of the proceedings. Though there is some variance of opinion on this point, it is generally held that alienage of a juror is no objection

when made after verdict. By others, however, it is maintained that the fact that an alien sat on the jury in a trial for felony vitiates the judgment, and that the objection that one of the grand jurors was not a citizen may be taken by special plea: 2 AMERICAN JURISPRUDENCE 473, Sec. 21.

The right to practice law is a privilege and its limitation to citizens is valid. The qualifications required for admission to the Bar are exclusively within the policy and discretion of each state. One of the conditions required in most states is that the applicant must be a citizen of the United States. The power of the state to prescribe citizenship as a requirement for admission to the Bar, and thus close the door to this profession to aliens, has never been denied. The applicant, upon his admission to the Bar, becomes an officer of the court. This is a privilege and not a right, and the power which grants the privilege can deny it to aliens. That the applicant has been admitted to practice in all the courts of another state is immaterial: 2 AMERICAN JURISPRUDENCE 474, Sec. 22.

Aliens can be debarred from the **right to form a corporation.** A state has a right to debar aliens from holding shares in her corporation, or to admit them to that privilege only on such terms as may be prescribed. The right of association under the protection of an artificial personality, and of doing business on its credit, whether it is obtained by a special charter or under a general incorporation law, is a franchise granted by the state to such, and such only, as are deemed fit to be intrusted with its exercise. Aliens can be excluded from membership in such bodies, unless they enter them on conditions which subject their investments to such burdens of taxation as the legislature may consider it proper to impose. This general rule may, of course, be modified by treaty: COMMONWEALTH *v.* HEMMINGWAY, 131 Pa. 614, 636; (1890) 2 AMERICAN JURISPRUDENCE 474, Sec. 23; 7 RULING CASE LAW, page 296, Sec. 272.

Thus, under the Pennsylvania Corporation Act of 1874, and as amended, the charter must be subscribed by five or more persons, three of whom, at least, must be citizens of this Commonwealth, and in the Act of May 5, 1933, P. L. 289, Article II, Section 201, for a nonprofit corporation, three of the five incorporators must be citizens of the United States, and under the Act of May 5, 1933, P. L. 364, Article II, Section 201, for a business corporation, at least two-thirds of the incorporators must be citizens.

Rights in realty have been limited to citizens. At common law aliens have no capacity to hold land against the state, and, if taken, the land may be escheated to the state: WEBB *v.* O'BRIEN, 263 U. S. 313, 68 L. Ed. 318; (1923) 2 AMERICAN JURISPRUDENCE 476, Sec. 28.

An alien cannot in general acquire title to real estate by descent, or by other mere operation of law: JACKSON *v.* LUNN, 3 Johns. Cas. (N. Y.); HUNT *v.* WARNICKE'S HEIRS, Hard. (Ky.) 61; GEOFROY *v.* RIGGS, 133 U. S. 258, 10 Sup. Ct. 295, 33 L. Ed. 642 (1890).

If he purchases land, he may be divested of the fee, upon an inquest of office found; but until this is done, he may sell, convey, or devise the lands and pass a good title to the same; ORR *v.* HODGSON, 4 Wheat. (U. S.) 453, 4 L. Ed. 613; (1819) FOX *v.* SOUTHACK, 12 Mass. 143; MOOERS *v.* WHITE, 6 Johns. Ch. (N. Y.) 365; MONTGOMERY *v.* DORION, 7 N. H. 475; OREGON MTG. CO. *v.* CARSTENS, 16 Wash. 165, 47 Pac. 421.

The state alone can question his right to hold land. BELDEN *v.* WILKINSON, 68 N. Y. Supp. 205; MADDEN *v.* STATE, 68 Kan. 658, 75 Pac. 1023.

As to rights acquired by operation of law, such as inheritance, at common law there could be no inheritance through an alien. The right of a state, in the absence of a treaty, to declare an alien capable of inheritance or taking property

and holding the same within its borders, is not precluded by the Constitution of the United States: BLYTHE *v.* HINCKLEY, 180 U. S. 333, 21 Sup. Ct. 390, 45 L. Ed. 557 (1901).

Thus, numerous restrictions have been upheld, for example, the restriction on aliens to use certain dangerous mechanisms or do certain things which fall within the class requiring licenses. See WRIGHT *v.* HAY, 127 Minn. 150, 149 N. W. 9; ANTON *v.* VAN WINKLE, 297 Fed. 340 (1924); STATE *v.* CARREL, 99 Ohio 285, 124 N. E. 129 (1919). Also, an ordinance prohibiting the issuance of a license to operate a motor bus to one who was not a citizen was sustained in GIZZARELLI *v.* PRESBREY, 44 R. I. 333, 117 Atl. 359; regulation restricting a pilot's license to legal voters of the state was upheld in STATE *v.* AMES, 47 Wash. 328, 92 Pac. 137; a peddler license in COMMONWEALTH *v.* HANA, 195 Mass. 262, 81 N. E. 149 (1907); liquor licenses in TRAGESER *v.* GRAY, 73 Md., page 250, 20 Atl. 905; BLOOMFIELD *v.* STATE, 86 Ohio 253, 99 N. E. 309 (1912); TRIMBLE'S LICENSE, 41 Pa. Super. Ct. 370 (1909). A statute requiring foreigners to procure a license to work in gold mines was approved in PEOPLE ex rel *v.* NAGLEE, 1 Cal. 232, 52 Am. Dec. 312 (1850); unnaturalized foreign born residents were denied the right to kill game or to possess or own a shotgun or rifle in PATSONE *v.* PENNSYLVANIA, 232 U. S. 138, 58 L. Ed. 539 (1914); fishing in waters of a state was denied to aliens in SILVER *v.* STATE, 147 Ga. 162, 93 S. E. 145; ALSOS *v.* KENDALL, 111 Oregon 359, 227 Pac., page 286 and STATE *v.* KOFINES, 53 R. I. 211, 80 Atl. 432.

There is a line of cases where certain of the states, by appropriate statutes, imposed a tax, money charge or fee either on the vessel owners or the immigrants at the port entry, to protect the state against paupers and others who might become public charges on the states of these various ports.

The Supreme Court held in this line of cases that where such statutes imposed these burdensome taxes on the shipmaster or the vessel owners, or the immigrants themselves, as a prerequisite or as a condition of landing of the immigrants, they were a tax for the right to land such passengers, and as such were unconstitutional. The court, however, upheld the requirement of a catalogue of passengers, with statements of their residence, etc.

The leading cases on this subject are the CITY OF NEW YORK *v.* MILN, 11 Peters 103 (1837); PASSENGER CASES, 7 Howard 283 (1849), and others.

In construing these cases, it is significant that the Supreme Court in HENDERSON *v.* WICKHAM, 92 U. S. 259, 23 L. Ed. 543, in the opinion by Mr. Justice Miller on page 269 said:

> "So far as the authority of the cases of New York v. Miln, and Passenger Cases can be received as conclusive, **they decide that the requirement of a catalogue of passengers, with statements of their last residence, and other matters of that character, is a proper exercise of state authority**, and that the requirement of the bond, or the alternative payment of money for each passenger, is void, because forbidden by the Constitution and laws of the United States. * * *" (Boldface ours)

Insofar as our investigation has led us there has never been a reversal of this position by the Supreme Court.

The question of the right of the duly constituted authority of the Commonwealth with respect to the use of highways and the granting of licenses to drive automobiles is ably considered in the case of COMMONWEALTH *v.* FUNK, 323 Pa. 390 (1936) from which we liberally quote as sustaining the

Commonwealth's right to deprive aliens unless registered of the right to use these highways as licensed drivers.

Mr. Justice Barnes said:

"The plenary power of the legislature over the highways of the Commonwealth is of ancient standing, and seldom, if ever, has been questioned: * * *

"It must be treated as elementary law that public roads are laid out and opened for the use of all persons on equal terms; that is, for all who comply with the reasonable regulations of the duly constituted authorities. The right to use a public highway for travel or in the transportation of merchandise is not unrestricted: Com. v. Dennison, 48 Pa. Super. Ct. 293. It is for the Commonwealth, acting through the legislature, to direct the conditions under which this limited right shall be exercised: City of Allegheny v. Zimmerman, 95 Pa. 287; Com. v. Doughty, 55 Pa. Super. Ct. 88. It alone has the power to regulate the manner and circumstances under which automobiles may be operated upon the highways of the Commonwealth. This power is vested in the legislature, and is based not only upon its right to control and regulate the use of the highways, but is buttressed by the inherent police power of the state.

"This power of the state has been upheld by the Supreme Court of the United States. In Kane v. New Jersey, 242 U. S. 160, 167, the Supreme Court said: 'The power of a state to regulate the use of motor vehicles on its highways has been recently considered by this Court and broadly sustained.' See Hendrick v. Maryland, 235 U. S. 610. Mr. Justice Butler said, in Hess v. Pawloski, 274 U. S. 352, 356: 'Motor vehicles are dangerous machines; and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and prop-

> erty. In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of all residents and nonresidents alike, who use its highways.' See also Hodge Co. v. Cincinnati, 284 U. S. 335."

From the foregoing, it is evident that the Pennsylvania Alien Registration Act is not an infringement of the Federal prerogative or powers. The Commonwealth is not here endeavoring to deport an alien nor deprive him of the right to enter or remain in the State. The fourteenth amendment did not deprive the states of their police power, and all that the statute under discussion provides is that such aliens register with the State so that certain facts with respect to their status be certified for purposes directly concerned with the exercise of the State's police power.

As indicated, supra, states have power to legislate with respect to aliens so long as the regulations provided in the act do not invade the sphere of national sovereignty or obstruct or impede the exercise of any authority which the Constitution has confided to the nation or if it does not deprive citizens of the rights guaranteed to them thereunder. The Alien Registration Law does not intend, nor does it in any manner conflict with or obstruct the Federal act with respect to aliens in connection with their requirement in registering with the immigration authorities. Immigration stops at the port of entry. The Pennsylvania statute, by requiring registration of aliens resident within its borders, reveals particular aliens who settle in the State, and does not invade the sphere of national sovereignty.

It should be noted that if a statute is enacted under the police power of the state, and if it in turn has a reasonable relation to the proper legislative purpose, and if it is neither arbitrary nor discriminating, the act must be regarded as constitutional since it meets the requirements of the Due

Process Clause of the Fourteenth Amendment of the United States Constitution.

With a large part of the World in a state of war we are facing a critical time in our history and we must anticipate trouble from those living within our borders whose allegiance is not to our form of government. It is recognized that there is within the various states and the Nation a Trojan Horse, a Fifth Column, be it Nazi, Fascist or Communist, which is spreading propaganda to undermine, by constant boring from within, the morale of our inhabitants, to harm our industrial plants and to make us an easy prey to the enemy. This group, organized for the purpose of sabotaging industrial plants necessary to create a supply of war materials essential for protection, works first in the state.

This court has repeatedly held that the state is the best judge of what is necessary for its protection. The convenience of a few to determine who is resident within the borders of the state is small in comparison with the safety and general welfare of the state and the Country as a whole. The state still has the right, as a local police measure, to regulate or register aliens so long as its regulations or registrations are not repugnant or irreconcilable with Federal enactments.

The Pennsylvania statute bases its classification on reasonable grounds and is not a mere arbitrary selection. It is not an oppressive measure and will obviously prove a beneficial and helpful measure to all inhabitants of the State including citizens and law-abiding aliens. By its requirement of registration, the State is aiming to acquire something of the same measure of control over aliens that the State has acquired over citizens, through registry of vital statistics, voters, and similar measures.

It is respectfully submitted, therefore, that the decision of the District Court holding the Alien Registration Act unconstitutional should be reversed, and the Alien Registration Law upheld, and further that injunction issued against appellants be dissolved.

Respectfully submitted,

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WILLIAM S. RIAL,
Deputy Attorney General.

CLAUDE T. RENO,
Attorney General.

Counsel for Appellants.

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No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1940

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS

v.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

On Appeal from the District Court of the United States for the Middle District of Pennsylvania

SUPPLEMENTAL BRIEF FOR APPELLANTS

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SUPPLEMENTAL BRIEF FOR APPELLANTS

ARGUMENT

We file this brief in reply to point No. III only of appellees' argument in which it is stated that the Pennsylvania Alien Registration Act is in conflict with

Section 16 of the Civil Rights Act of 1870, 16 Stat. 140, now appearing in Section 1977 of the Revised Statutes (8 U. S. C. A. 41). This point is first raised in the argument of the Solicitor General, of which point appellants had notice only a few days before the case was called for argument.

The Civil Rights Act of 1870 is known as the "Enforcement Act" and was passed for the more effective enforcement of the Fourteenth Amendment, and thus the act does not stand any higher than the Fourteenth Amendment, but rather is subordinated to it.

If the Pennsylvania statute is justifiable under the police power of the State, and the appellants contend that it is, the statute is not in conflict with the provisions of the Fourteenth Amendment, and hence cannot be in conflict with the congressional act. If the Fourteenth Amendment does not invalidate the Pennsylvania Act, the Act of 1870 cannot do so, and hence we come back to the original position of appellants and appellees that the Pennsylvania Alien Registration Act stands or falls in so far as it does not or does violate the Fourteenth Amendment.

Appellants contend that the classification under the Pennsylvania statute is a reasonable one, and that the act is justifiable under the police power of the State; that even civil rights and liberties are limited by the necessity for public action which fluctuates between conditions of peace and war.

The brief of the Solicitor General challenges the right of the Commonwealth of Pennsylvania to pass the act in question because of the Civil Rights legislation passed to effectuate the Fourteenth Amendment, which the Government contends covers this case; and particularly by reason of those Federal statutes which declare that all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, to be parties, to give evidence, and to enjoy the full and equal benefit of all laws and proceedings for the security of persons and property that is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. U. S. C. A. Title 8, Section 41.

It would seem that the Fourteenth Amendment to the Federal Constitution was intended to secure to all persons the civil rights which the white race enjoys but no greater rights than those enjoyed by the white race. CRESWILL *v.* GRAND LODGE K. P., 225 U. S. 246, 56 L. Ed. 1074.

But this amendment was not confined, of course, to the protection of resident or non-alien citizens. This application is to all persons without regard to any difference of race or color or nationality. KENTUCKY *v.* POWERS, 201 U. S. 1, 50 L. Ed. 633.

Aliens residing in the United States are entitled, so long as they are permitted by the Federal Government, to remain in the country, to the safeguard of the

Constitution, to the protection of the laws in regard to their rights of person and property and, therefore, are impressed with consequent civil and criminal responsibility. FONG YUE TING *v.* UNITED STATES, 149 U. S. 698, 37 L. Ed. 905. See also dissenting opinion in FONG YUE TING *v.* UNITED STATES, 149 U. S. 754, 37 L. Ed. 927.

The logic, however, of the cases on the Fifth Amendment, the Thirteenth Amendment and the Fourteenth Amendment to the Constitution does not place the alien upon a higher plane than that of citizens. It is certainly the law that an alien is not entitled to the privileges and immunities of a citizen strictly as such under the Constitution, yet he is a "person" to whom the State cannot deny the equal protection of its laws. The provisions of the Fourteenth Amendment certainly are universal in their application to all persons in their right to life, to liberty and property. However, aliens are under no special constitutional protection which forbids a classification, otherwise justified simply because the limitation of the class falls along the line of nationality. The difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of the police power. This is clearly shown by the case of OHIO, EX REL. *v.* DECKEBACH, 274 U. S. 392, 71 L. Ed. 1115, and a long line of cases cited by appellants in their brief.

The able Solicitor General tried to point out that possibly the Civil Rights Bill of 1870 was not considered

when that case was heard before this Court. But the court said:

> "Although the Fourteenth Amendment has been held to prohibit plainly irrational discriminations against aliens * * * it does not follow that alien race and allegiance may not bear in some instances such a relation to a legitimate object of legislation as to be made the basis of a permitted classification."

This Civil Rights Act, to which attention has been called in the brief of the Solicitor General, clearly does not mean that the alien and the citizen are upon the same basis so far as rights are concerned. Uniformly this Court has held that there are restrictions on aliens appropriately made by the various states, such as to vote, to possess firearms, to be employed on public works, to sell intoxicating liquors, and many other rights to which we have called attention in our brief.

It is unreasonable to assume that the Commonwealth of Pennsylvania would enforce its Alien Registration Law in the annoying manner described by appellees. Not only is the State bound by the Fourteenth Amendment and the Federal Civil Rights Law of 1870 passed in pursuance thereto, but within its own Constitution it has express provisions granting civil rights. It is obvious that no state law could be enforced in such a way as to violate these fundamental principles.

The state, as was said in HENDERSON *v.* WICKHAM, 92 U. S. 259, 23 L. Ed. 543, has a right to obtain a roll or list of its alien population, and it is appellants'

contention that the state certainly has need of such a list, not only to better enforce its valid state laws restricting and limiting aliens, but also for the more effective internal protection of its people and property.

Respectfully submitted,

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No. 22

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v.

BERNARD DAVIDOWITZ

and

VINCENZO TRAVAGLINI

On appeal from the District Court of the United States for the Middle District of Pennsylvania

---

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Appeal from the District Court of the United States for the Middle District of Pennsylvania

BRIEF FOR THE APPELLEES

OPINION BELOW

The opinion of the United States District Court for the Middle District of Pennsylvania (R. 20-32) is reported in 30 F. Supp. 470.

JURISDICTION

The judgment of the United States District Court for the Middle District of Pennsylvania was entered November 30, 1939 (R. 32-33). The appeal (R. 34-35) was filed on February 7, 1940, and the order allowing the appeal

(R. 37) was entered on February 8, 1940. Probable jurisdiction was noted by the Court on March 25, 1940. The jurisdiction of this Court rests on Section 266 of the Judicial Code as amended (28 U. S. C. A. 380).

STATEMENT

Appellees are content to rely on the statements set forth by the Attorney General of the Commonwealth of Pennsylvania in brief of the Appellants, and by the Solicitor General of the United States in his brief as Amicus Curiae. There is no need to burden the Court with further statements explaining how this litigation arose.

SUMMARY OF ARGUMENT

1. The Act Is Discriminatory, Unreasonable, Inconsistent and capricious.

Appellees respectfully refer the Court to the Transcript of the Record where the Act in controversy is fully set forth (R. 11).

A reading of the Act leads to the inescapable conclusion that it is loosely and carelessly drawn, that it is inconsistent, discriminatory, unreasonable and, as will be shown, even capricious. The Act purports to provide for the registration of certain aliens "residing" in Pennsylvania. It creates two offenses: failure to register; and failure to carry a registration card.

In addition to the two offenses created by the Act and the penalties fixed upon offenders under the terms of the Act, it proscribes issuance of automobile owners' and operators' licenses to such aliens. We deem it important to analyze the Act clause by clause and section by section before this Court hears further argument.

Section 1 of the Act states that it applies to all aliens except those under 18. However, a later exception in the

same section says that if parents of aliens under eighteen are aliens, the registration of such parent must list the names and ages of all children under eighteen residing with such alien parents, including not only alien children but children who may be citizens of the United States, natural or naturalized. The Act provides that any alien who registers under it must list the names and ages of all children under eighteen residing with such alien, and if they are not his own children, the names of the parents of such children and such other information as the Pennsylvania Department of Labor may direct.

The Act also excepts from the registration provisions an alien who is the father or mother of a son or daughter who served in the service of the United States during any war, regardless of length of residence in Pennsylvania or in the United States, of such parent. The parent may have come here at any time since January 1, 1909. The parent of such person may have just been admitted from a country where his activities, political and otherwise, were steeped in a philosophy contrary to the welfare of the Commonwealth of Pennsylvania and of the United States of America. Yet such a parent, despite subversive intentions, would be exempt solely because a son or daughter was in the service of the United States during any war.

Now the term "service" is not defined or explained. It is possible to define the word "service" as employment on the railroads which were operated by the United States during the World War, or employment as chauffeur, stenographer or clerk in any department or bureau of the Federal government, or in any capacity including military service. It could *not* include a nurse with the Red Cross, Y. M. C. A., Salvation Army or any other of the many agencies which helped maintain the morale of the members of the armed forces of the United States in the late United States wars. Yet the parents of a boy who came of enlistment age say, for example, in 1919, and who joined a

branch of the United States armed forces, and during all the intervening years served in the various engagements in which our armed forces have seen duty both on the American continent and abroad, and those parents may have been here from any time after January 1, 1909, they would nevertheless be subject to the Act regardless of where their sympathies lay. Their sympathies might be enthusiastically with our form of government and with our institutions, yet if they neglected or overlooked declaring their intention to become citizens or could not avail themselves of the many privileges that go with being a citizen, they would be subject to the Act and would have to register, pay the fee and carry the card.

The brief of Appellants seems to indicate that one of the beneficial results of this legislation in Pennsylvania would be to curb subversive activities but the Act does not take into consideration the political philosophies and governmental loyalties of those it affects. It merely creates artificial, arbitrary, discriminatory classifications based on caprice and caprice alone. Section I also speaks of declaration of intention of becoming a citizen. There are great numbers of persons in the United States, and a good many in the Commonwealth of Pennsylvania, who cannot become citizens. The Commissioner of Naturalization in his report of April 1, 1925 on Page 16 said, concerning applicants for registration:

> "The Supreme Court of the United States has held in the case of those coming to this country after June 29, 1906, that it is a mandatory requirement that a certificate of arrival be filed as part of the application for naturalization. There are large numbers of cases where for some reason for which the alien is not responsible there is no record of the date, place or manner of his arrival before January 3, 1921. (The date of the beginning of the quota restrictions.) In these

> cases it would seem unjust to deny the alien, who had not evaded the law and who is not responsible for lack of records, a certificate of arrival and thereby prevent him from having his eligibility for naturalization determined."

Another factor overlooked in the provision which seeks to exempt those who have declared their intention to become citizens, is the peculiar phraseology of this exemption. The Act provides that any one who has filed a declaration of intention to become a citizen and who, within three years, fails to become a citizen is not exempt from the provisions of the Act. The Federal Naturalization Act provides, however, that in order to become a citizen one must have resided continuously in the United States for at least five years (8 U. S. C. Sec. 382). One who has been in the country less than two years when he files his declaration of intention cannot become a citizen within three years after his declaration was filed. Under the Pennsylvania Act an immigrant who has just entered the United States may avoid the obligation of registering by filing a declaration of intention to become a citizen. For the next three years he need not register. In the following two years, after he has learned something of our institutions, something of the political philosophies of our government, something of the traditions of the form of government under which we live in the United States, then he must register as an alien, even though he is closer to citizenship and closer to assimilation than at any time during the first three years during which he was exempt under the Act. Certainly this is a capricious provision. How can the Commonwealth seriously contend that its purpose is to keep a record of those who are unfamiliar with our ways? How can the Commonwealth exempt a person for the first three years of his stay in the Commonwealth if he has declared his intention of becoming a citizen and then for the next two years say that he must register so that the Commonwealth will know where to keep its eye on him!

The Act also exempts aliens who have resided in the United States since December 31, 1908 and who have never been convicted of any criminal offense in any Court of record. Suppose an alien who is here since the date mentioned was convicted, before a magistrate or justice of the peace, for playing golf on Sunday, which is a violation of the Pennsylvania Blue Laws of 1794. He is fined $4.00, the maximum penalty, and files an appeal to a Court of record, where the matter is heard de novo. He is again found guilty. Would that take him outside the exception and make it necessary for him to register?

Section 1 of the Act also speaks of an "American" citizen. The word "American" is not defined, explained or construed in the Act. Would a citizen of Canada, Mexico, Cuba, Argentina, Brazil, Chile, Ecuador or any other Latin-American Republic be an American under the terms of this Act? Our great President, in his splendid Columbus Day oration, speaking to the Latin-American countries, spoke of all of the American Republics as "The Americas" and in another place as "We, of the Americas." (Philadelphia Record October 13, 1940.) If the exemption does apply to the citizens of other American countries is this not an additional violation by Pennsylvania of the treaty making powers of the United States?

There are other mysteries in the phraseology of this Act. The last sentence of Section 1 says, "Such registration shall show the name, age . . . of such *alien member* . . ." (Italics ours). Nowhere in this section or in any other part of the Act is there anything to show what the alien could be a member of. There is no antecedant clause, noun or designation showing where the alien's "membership" applies. What could the Legislature have meant?

The Act also gives inquisitorial powers to the Secretary of Labor and Industry and unlawfully delegates to him powers requiring information from the alien concerning

children, citizens and aliens alike, who reside with any registrant.

Section 1 of the Act provides that every such alien, becoming a resident of the Commonwealth of Pennsylvania after January 1, 1940 shall, in like manner, register within thirty days after becoming such resident. This provision is inconsistent with Sections 2 and 5 which require such aliens to carry identification cards at all times and to exhibit same on demand even within the thirty-day period during which the poor, unwelcome alien becomes a resident of the heretofore friendly Commonwealth of Pennsylvania.

Sections 2 and 5 contain no exceptions for the itinerant alien. What does the word "resident" mean? It is not defined in any part of the Act and it is vague as used in the Act. Is it to be given the interpretation rendered under the Pennsylvania Adoption Act of 1855 where even a temporary resident of Pennsylvania is able to obtain the benefit of adoption statutes? Does the Legislature contemplate the inclusion of limits of domicile? Does the word "resident" mean one who has domiciliary intentions? Would it affect an alien who spends the season in one of the many beautiful vacation resorts in Pennsylvania? The word "resident" is too vague, and will make this Act difficult of enforcement, if it can survive this constitutional test.

The provisions of Section 2 are vague. If the class affected can be determined from the slipshod, loosely-drawn Section 1, then as to that vague class, the Act imposes a fee which violates the Pennsylvania constitutional provision (Article IX Sec. 1) for uniformity of taxation, because the registration fee under this Act must be paid by an artificially created class of aliens and not by all aliens; by an artificially and arbitrarily created group of persons and not by all persons. This Section also provides that the registrant must carry the card at all times and must exhibit it upon demand by any police officer or agent of the De-

partment of Labor and Industry displaying evidence of his authority. Again this creates a burden on an itinerant alien who must prove to the satisfaction of some petty police official or petty agent that he is a resident of Pennsylvania. It brings up all the objections mentioned above in discussing the word "resident."

Section 3 of the Act prohibits the issuance of owners' or operators' licenses to aliens who refuse to register in accordance with the terms of the Act. Such refusal might prevent plaintiff Travaglini, and others similarly situated, from obtaining employment or from hiring aliens similarly situated or not registered where a driver's license is required. That is unlawful discrimination which violates the Fourteenth Amendment (Sec. 1) which provides that no state shall

> "deprive *any person* of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 4 of the Act states that the Department shall have the power to make and enforce rules and regulations and carry into effect and enforce the provisions of the Act. The Legislature did not require photographs, fingerprints or other such evidence of identification. Suppose the Secretary of Labor and Industry of the Commonwealth of Pennsylvania in his rules and regulations requires photographs or fingerprints, would that be an abuse of the power granted him?

Section 4 further provides that the copies of such records shall be filed with the Pennsylvania Motor Police. This creates a new type of police supervision over the poor alien in Pennsylvania.

Section 5 stipulates the penalties for failure to register and provides for a fine of $100 or sixty days in jail or both, and provides as punishment for failing to carry the regis-

tration card and failing to exhibit it when demanded, $10 fine or ten days in jail or both. However, nowhere in the Act is the offense defined as a misdemeanor, felony or any other category of crime.

Section 6 (a) places no limit of time within which an information must be filed in the name of the Commonwealth with justices of the peace, aldermen or magistrates. The only limitation is that

> "within not less than five days or more than ten days after the information is filed the magistrate, alderman or justice of the peace must send by registered mail to the person charged, at the address of such person, a notice in writing of the filing of the information together with a copy thereof, and a notice to appear within ten days of the date of the written notice."

The Act does not say how the alderman or magistrate will get the address of the person to whom he is to send the registered mail nor does it say where hearings will be held for such offenses. That, we presume, is all part of the regulations which the Secretary of Labor and Industry is empowered to promulgate. However, failure to appear makes the person liable to arrest on warrant. There is no limit to the amount of bail a magistrate can set, there is no right given to waive a summary hearing, there is no mention of any right of appeal. If there is an implied right of appeal, there is no mention of the court to which to take such appeal. The offense is not defined as a crime, a felony or a misdemeanor.

There is a serious doubt as to the validity of service of notice to appear by registered mail in a proceeding of this kind. The mere fact that failure to appear requires the issuance of a warrant of arrest does not cure the defect.

Nowhere in the Act is there any mention of diplomatic immunity. Consular officers residing in Pennsylvania would

be required to register under this Act. Such a provision clearly is a violation of international law which dates back as far as the "ius gentium" of Roman times.

In the oral argument in the Court below and in the brief filed by Appellant in this Court, the Commonwealth of Pennsylvania contends that the Pennsylvania Alien Registration Act was enacted in order to secure information in regard to aliens within its own boundaries. We respectfully submit that analysis of the language of the Act shows that the information which the Commonwealth would get as a result of the enforcement of this Act will be far short of any helpful information. If the Commonwealth were sincere in its contention that it seeks information, registration would have been made universal in the Commonwealth and not merely registration of a group of aliens established by caprice, compromise and haggling as to what aliens, if any, to register.

The Commonwealth insists that the statute does not interfere in any way with an alien's compliance with the Naturalization statutes. We have demonstrated that the Act does interfere. An immigrant here less than two years could declare his intention to become a citizen and for the first three years of his declaration he would not be liable to the provisions of the Registration Act but during the rest of the time necessary to complete his five years' residence in the United States he would be subject to the requirements of the Act.

2. The Act Encroaches Upon a Field Reserved to Federal Action.

After reading the very able brief of the Solicitor General of the United States heretofore filed herein as Amicus Curiae, we hesitate to burden the Court with further citations or further explanation of the citations contained in the Solicitor General's excellent brief. Repetition is not necessary to impress this Court with the points sought to

be made here. Suffice it to say that the Commonwealth concedes that immigration and naturaliaztion under Article 1, Section 8, Clause 3 of the United States Constitution, are within the exclusive power of Congress. However, the Commonwealth of Pennsylvania, in the brief filed by its learned Attorney General, seeks to have this Court say that the provision cited does not place entire jurisdiction over aliens under Congress; and that the State, under the police power, can place restrictions and limitations on aliens. We must admit that this bare statement is true: but it is only a half-truth and does not go far enough. The State can control aliens as well as citizens who violate definite criminal statutes which apply to all persons, or all aliens, but the State cannot enact legislation which merely seeks to regulate aliens because of alienage. We would be faced with a terrible situation in this country if an alien would have to cope with forty-eight different laws in addition to the laws of the United States. The point involved here was very effectively decided in the case of PEOPLE v. BAUM, 251 Michigan 187, where the Supreme Court of Michigan stated:

> "To permit one State to dump its convict criminals into another, would entitle the state believing itself injured thereby to exercise its police and military power in the interest of its own peace, safety and welfare to repel such invasion. It would tend to incite contention, provoke retaliation and disturb the fundamental equality of political rights among the several states which is the basis of the Union itself. Such a method of punishment is not authorized by statute and is impliedly prohibited by public policy."

In the case of TRUAX v. RAICH, 239 U. S. 33, at p. 39, this Court said:

> "This alien was admitted with the privilege of

entering and abiding in the United States and hence of entering and abiding in any state of the Union."

Under the provisions of the statute in the case at bar, it would be necessary for every person of foreign birth within the Commonwealth to carry a prescribed certificate of legal residence so that he may at all times be able to show a prospective employer, a prospective client or customer, or any policeman who may happen to stop him on the street, that he is a legal resident of the United States and of Pennsylvania. It would also be necessary for any person coming from Ohio, New York, New Jersey, Delaware, West Virginia or any other state of the union into Pennsylvania for business, whether for a day or a month to carry with him proof which the Commonwealth of Pennsylvania shall designate as sufficient, of the legality of his presence in the United States, or in lieu thereof proof that he is only in Pennsylvania as a temporary visitor and that he will not stay more than thirty days.

It requires no prophetic vision to foresee the consequences if State legislation of this type be upheld. Within the space of a few years we would no longer have a nation whose frontiers consist only of the Canadian and Mexican borders and the Atlantic and Pacific Oceans. Instead we would be confronted with a situation approximating that which existed in Europe before the war and which exists there today. It is not exaggeration to say that this country would take on the appearance of forty-eight armed camps with officials and inspectors at every state line. A resident of Camden, New Jersey who tries to motor to Philadelphia on a Sunday afternoon to visit a relative or a friend will find himself confronted with all the red tape and restrictions confronting the tourist who tries to go from Lisbon to Paris. Citizens will become less and less citizens of the United States and to a greater degree citizens of Pennsyl-

vania, New Jersey, Delaware or whatever State they may happen to reside in.

Judge Biggs in the learned opinion filed in the Court below (30 F. Supp. 470) cited many cases which have been adjudicated by this Court which uphold the principle that only the Federal government can legislate with respect to any system of registration and identification of aliens admitted to the United States (R. 26).

In the oral argument in the Court below Pennsylvania's Attorney General set great store by his contention that the Commonwealth owns the roads and therefore has the right to prescribe who shall and who shall not use those roads and under what terms they may be used. However, the Attorney General overlooked the fact that the Federal government subsidizes the state to a great extent in the maintenance of roads; that many of the through roads are United States highways; that those roads are necessary in interstate commerce, and for that reason the use of the roads, subject to the ordinary police powers of the Commonwealth, is also a matter for Federal regulation. Judge Biggs in the lower Court cites the case of ARROW-SMITH v. VOORHIES, 55 F (2d) 310, where a Michigan statute, very similar to the one at bar, provided among other things that persons of foreign birth illegally entering the United States would be denied admission to Michigan or if detected after entry, should be deported from Michigan, and that unnaturalized foreign born citizens should obtain certificates of legal residence. The Federal Court there held the statute unconstitutional and stated that by its terms the State of Michigan was attempting to usurp the power vested by the Constitution exclusively in Congress "over the control of aliens and immigration." The Court cited HENDERSON v. MAYOR OF NEW YORK, 92 U. S. 259, and CHY LUNG v. FREEMAN, 92 U. S. 275 stating:

> "The power to regulate the terms and conditions under which aliens may live in any of the several states, having been given by the Constitution to the Federal Government and that government having exercised it, the right of the Federal Government is paramount and exclusive and the Act under consideration is an unlawful invasion of it."

In the case of TRUAX v. RAICH, (supra), Chief Justice Hughes delivering the opinion of this Court, stated that an Arizona law which provided that any person, or corporation, employing more than five individuals at one time should employ no less than eighty per cent qualified electors or native born-citizens of the United States, was unconstitutional. The learned Chief Justice stated (p. 42):

> "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state, would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And if such a policy were permissable the practical result would be that those lawfully admitted to the country under the authority of the Act of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated to such of the States as chose to offer them hospitality."

Judge Biggs in the opinion below drew the analogy to this case in his opinion when he says (R. 28):

> "While the Truax case deals specifically with a limitation imposed by a statute upon the right of an alien to earn a living, its principle is applicable

under the circumstances in the case at bar for Travaglini cannot live in Pennsylvania except under the burden of compulsory registration, precisely as Raich could not live in Arizona unless he was permitted freely to earn his livelihood. As stated by the Chief Justice, an alien cannot live where he cannot work. It is equally true that an alien cannot work where he cannot live. In the case at bar as in the Truax case, the right of the alien to reside within the state is circumscribed by statute.

"The power of the Federal government to require the registration of aliens is clear. Congress has legislated to some extent in this particular field already. See Act of June 29, 1906, c. 3592 Sec. 1, 34 stat. 596 (8 U. S. C. A. 106) and Act of February 5, 1917, c. 29, Fed. 12, 39 stat. 882 (8 U. S. C. A. 148).

"Congress has also legislated in respect to a large part of the field of alien control, specifying terms and conditions upon which aliens may remain in the United States, the method of their entry and the conditions under which they may be deported. A considerable portion of Title 8 of the Code of the United States (8 U. S. C. A.) is devoted to these subjects . . . ".

(This opinion was written before the enactment of the Federal Registration Act of 1940.)

Using the words of Judge Biggs (R. 29):

"The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without

authority to legislate. Therefore, it may not be justified as an exercise of the police powers of the State of Pennsylvania. It attempts to usurp power provided by the Constitution to the Federal Government."

3. The Act Denies Equal Protection of the Laws to Aliens in Pennsylvania.

In the first part of our argument we have tried, by analysis of the Act, to show that this was an ill-conceived piece of legislation. The title of the Act reads:

> "An Act requiring certain aliens to register with the Department of Labor and Industry and to carry and upon proper demand to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties."

Had the Legislature enacted a Licensing Act prescribing what qualifications were necessary for the driving of an automobile and had the Commonwealth stated there that one of the qualifications necessary was citizenship, there is no doubt the Act would be unconstitutional. How much more so is it unconstitutional if the denial of a driver's license is based upon the refusal of an alien to comply with the Registration Act. As the learned Court below said (R. 29):

> "Since the Act impairs the right of an exempt alien to reside within the Commonwealth of Pennsylvania, the Commonwealth has legislated in a field reserved to the Federal Government, the classification of the Act is as unwarranted as it is unreasonable and the alien is thereby denied the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment."

We could quote at length from many citations in the cases before the United States Supreme Court on pertinent points but hesitate to do so because most of these citations already appear in the able brief already filed by the Solicitor General. We respectfully contend that behind the intent of the Pennsylvania Act here in question is an attempt to exclude from the Commonwealth of Pennsylvania those who do not or will not register in accordance with its terms. The Act does not say that upon a single conviction for failure to register, the alien shall thereafter be exempt from the terms of the operation of the Act. On the contrary, as long as the alien remains a conscientious objector and insists on living in Pennsylvania so long is he subject to the penalties visited upon him by the Pennsylvania Alien Registration Act. Apparently Pennsylvania seeks to avoid any charge of usurpation of Federal power by pretending to make this Act seem effective under a power which the State does not have. The Pennsylvania Act clearly violates the United States Code Title 28 Sec. 41 (R. S. 1977) which states in part:

> "All persons within the jurisdiction of the United States shall have the same right in every territory and state to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

The most significant fact in connection with the above provision is that it refers to "persons." Perhaps we can understand the legislative policy that precipitated such an enactment when we remember the fact that the current Pennsylvania administration did not provide any appropriation for the continuance of the Bureau of Civil

Rights, a bureau created by a prior legislature. It is not too much to assume that this Act also was intended as a curb on the civil rights of aliens within the borders of the Commonwealth of Pennsylvania. In the Court below Judge Biggs stated (R. 29):

> "The statute at bar . . . imposes a burden upon aliens simply because they are aliens."

The Court goes on to say (R. 29):

> "Even assuming that the Commonwealth of Pennsylvania possessed power to make the classification under consideration, nonetheless that classification is unreasonable for the Commonwealth would permit citizens and such aliens as are within the exemptions of this statute to pass freely from place to place, but all other aliens though lawfully within the state, must register, pay annual fees, carry identification cards to be produced on demand, and are subject to drastic penalties if they do not do so."

The TRUAX case (supra) and the case of ARROWSMITH v. VOORHIES (supra) and many other cases condemn such classification as unreasonable. In the case of EX PARTE KOTTA, 187 Cal. 27, relying upon both the Fourteenth Amendment and the Civil Rights Act (R. S. 1977), the Supreme Court of California held that the Alien Poll Tax Law of California creating an alien poll tax was invalid. The Court said (on P. 31):

> "Stated very generally the requirement is for equal protection and security of all, citizens and aliens alike, under like circumstances, in the enjoyment of their personal and civil right and in the imposition of burdens, such as penalties, taxes . . ."

The argument of the learned Attorney General that such an Act will force aliens to become naturalized is a poor one. As Judge Biggs said (R. 30, 31):

> "While naturalization of aliens residing within our borders is a matter to be encouraged, the desire of the applicant for citizenship should be inspired and engendered by his own observation of and experience with the living example of true democracy. It must never be compelled by an Act of oppression or tyranny. Otherwise, we might well be deluding ourselves in believing that when the new citizen adjures allegiance to his late sovereign and swears fealty to our government, his act is one of the heart and not of a designing mind goaded to a subterfuge. Citizenship in the best sense of the term rather than the number of naturalizations is the thing of real importance. Regulation of naturalization rests with the Federal government."

The Court must not be misled by the arguments of the Commonwealth that it can regulate certain activities of aliens such as excluding aliens from certain professions, granting aliens certain licenses, etc. Upon examination most of these rights are based upon property rights of the Commonwealth in the forests and ferae naturae so far as the right to hunt game is concerned; allegiance to the Constitution of the United States and the State where the right to practice law is concerned; and similar reasons with respect to any of the many prohibitions upon the right of an alien to engage in certain restricted activities, rightfully exercised by the States.

Plaintiff Travaglini is the holder of a motor vehicle operator's license. From time to time he uses the privilege conferred on him by this license to earn a livelihood.

Should he fail to register under the Pennsylvania Act he would be deprived of that manner of earning his livelihood. This certainly deprives him of his property rights, and as to his liberty, we quote from ALLGEYER v. LOUISIANA, 165 U. S. 578 p. 589. Said Mr. Justice Peckham, in that case speaking for the Court:

> "The liberty mentioned in the amendment means not only the right of the citizen to be free from the mere physical restraint of his person by incarceration but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his facilities; to be free to use them in all lawful ways; to live and work where he will earn his livelihood by any lawful cause; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper and necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

The case of TRUAX v. RAICH (supra) held that the alien is a person protected under the Fourteenth Amendment and entitled under the provisions thereof to adopt "the ordinary means of earning a livelihood." In California the $10 annual tax on aliens was declared unconstitutional, in the KOTTA case; in New York the Passenger Cases declared unconstitutional an attempt to levy a dollar tax on all aliens entering the port of New York. The tax or license or registration fee required under this Pennsylvania Act is nothing more than a combination of two illegal taxes. Does Pennsylvania seriously contend that by resorting to algebra where two negatives make a positive she can resort to a mathematical abracadabra and produce from the spawn of two unconstitutional levies a law which will be upheld in spite of its glaring unreasonableness and basic violation of the fundamental law of the land?

The Federal Constitution states unequivocally it is the supreme law of the land. Pennsylvania subscribed to that Constitution. The Constitution vested in Congress exclusively the right to deal with aliens. We respectfully contend that the decision of the lower Court is proper and should be sustained. The appeal should be dismissed.

Respectfully submitted:

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No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1940

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS

v.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 22

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS

v.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES, AMICUS CURIAE

OPINION BELOW

The opinion of the United States District Court for the Middle District of Pennsylvania (R. 20–32) is reported in 30 F. Supp. 470.

JURISDICTION

The judgment of the United States District Court for the Middle District of Pennsylvania was entered November 30, 1939 (R. 32–33). The appeal (R. 34–35) was filed on February 7, 1940, and

the order allowing the appeal (R. 37) was entered on February 8, 1940. Probable jurisdiction was noted by this Court on March 25, 1940. The jurisdiction of this Court rests on Section 266 of the Judicial Code, as amended.

QUESTIONS PRESENTED

The only questions discussed in this brief are:

1. Whether the Pennsylvania Alien Registration Act (P. L. 652, June 21, 1939; Purdon's Pa. Stats. Ann., Tit. 35, §§ 1801–1806), has been superseded by the federal Alien Registration Act of 1940 (Pub., No. 670, 76th Cong., 3d Sess., c. 439).

2. Whether the states have power to require the registration of resident aliens in the absence of express congressional consent.

3. Whether the Pennsylvania statute violates the provisions of Section 16 of the Civil Rights Act of 1870 (R. S. § 1977, 8 U. S. C. § 41).

STATUTES INVOLVED

The provisions of the Pennsylvania Alien Registration Act are set forth in Appendix A, *infra*, pp. 50–53.

The provisions of Title III of the federal Alien Registration Act of 1940 are set forth in Appendix B, *infra*, pp. 54–59.

STATEMENT

Proceedings below.—On June 21, 1939, the Commonwealth of Pennsylvania adopted an act "requiring certain aliens to register with the Department of Labor and Industry and to carry and, upon

proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties." Section 1 provides that during December 1939, and each year thereafter, aliens over eighteen years of age residing in Pennsylvania must register with the State Department of Labor and Industry. Several items of information to be required from registrants are specified, and the Department is given authority to require "other information and details." Certain classes of aliens, notably those residing continuously in the United States since 1909 without being convicted of a crime, are exempted. Section 2 establishes a registration fee of $1, and requires a registered alien to carry, and to exhibit on proper demand, an "alien identification card." Section 3 prohibits the registration of an automobile in the name of any alien and forbids the issuance of a driver's license to any nonexempt alien who fails to produce an identification card. Section 4 provides for the administration of the Act, and authorizes the Department of Labor and Industry to promulgate and enforce rules and regulations for its enforcement. Sections 5 and 6 impose penalties for violations and prescribe enforcement procedures.

Shortly after the enactment of the statute, the appellees brought this action "on behalf of themselves and * * * of all other residents or citizens or taxpayers who may lawfully join herein,"

in the United States District Court for the Middle District of Pennsylvania, to enjoin the defendant officers of the state from enforcing the Act (R. 3–13). The complaint invoked the jurisdiction of the district court under Section 24 (14) of the Judicial Code and under Section 266 of the Judicial Code, providing for a three-judge statutory court (28 U. S. C. §§ 41 (14), 380). Plaintiff Davidowitz alleged that he was a naturalized citizen, of foreign appearance and speaking English with a noticeable foreign accent, that, notwithstanding the limitation of the Act to aliens, he would be subject to constant questioning and harassment because of his appearance, and that his right of privacy would be invaded (R. 6, 9). Plaintiff Travaglini alleged that he was an alien subject to the Act (R. 4, 7), that the statute trenched upon the exclusive jurisdiction of Congress to regulate immigration and aliens, and that it was in violation of the due process and equal protection clauses of the Fourteenth Amendment (R. 5–7). The statute was also attacked as violative of various provisions of the state constitution (R. 6). The complaint averred that appellants intended to enforce the Act and that the appellees were threatened with irreparable injury (R. 9–10). The prayer was for a preliminary and final injunction (R. 11).

The answer (R. 14–17) admitted the material facts stated in the complaint but denied that the

Pennsylvania Alien Registration Act was unconstitutional. Appellants also alleged that Davidowitz, being a citizen of the United States and a resident of Pennsylvania, could not invoke the jurisdiction of the court (R. 14, 17).

Appellees then moved for judgment on the pleadings, pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure (R. 18–19). A court of three judges was convened pursuant to Section 266 of the Judicial Code. After hearing, this statutory court, in an opinion by Circuit Judge Biggs, held that the statute was invalid because it purports to operate in a field reserved to Congress and in which the states are without authority to legislate, and also because it denies aliens equal protection of the laws in violation of the Fourteenth Amendment (R. 20–32). Davidowitz, however, was held to have no standing to sue, since the statute did not invade the rights of citizens. A perpetual injunction against enforcement of the Act was granted (R. 32–34).

Alien Registration Act of 1940.—On June 28, 1940, after the decree had been entered and an appeal therefrom taken to this Court, Congress enacted the Alien Registration Act of 1940, establishing a comprehensive federal alien registration system. Title III of this Act provides for the registration and fingerprinting of all aliens fourteen years of age or older now or hereafter in the United States who do not register before entering the country and who remain here for thirty

days or longer. Sec. 31 (a). Parents or guardians of aliens less than fourteen years old are required to apply for the registration (but not fingerprinting) of such aliens. Sec. 31 (b). Provision is also made that aliens hereafter seeking to enter the United States must be registered and fingerprinted before receiving visas. Sec. 30. Special regulations are authorized with respect to certain designated classes of aliens requiring separate treatment. Sec. 32 (c). Only foreign government officials and members of their families are exempted. Sec. 32 (b).

The Commissioner of Immigration and Naturalization is authorized to prepare registration forms containing inquiries "with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the criminal record, if any, of such alien; and (5) such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General."

Registered aliens resident in the United States are required to notify the Commissioner of each change of residence within five days, and other registered aliens, such as visitors, are required to give notice of their address "at the expiration of each three months' period of residence in the United States." Penalties are prescribed for wil-

ful failure or refusal to comply with any of the statutory requirements. Sec. 36.

The Commissioner has promulgated detailed regulations for the administration and enforcement of the Act (Code of Federal Regulations, Title 8, Part 29, 5 Fed. Reg. 2836) and has established a comprehensive system of registration procedures. The actual registration and fingerprinting of aliens at the various post offices throughout the country began on August 27 of this year and will continue through December 26.

INTEREST OF THE UNITED STATES

The Alien Registration Act of 1940 establishes a complete and integrated federal system for the registration and fingerprinting of aliens. The registration and fingerprinting of aliens under this Act are now taking place. Administration of the Act, however, will be embarrassed and impeded if the various states are allowed to legislate in the same field, whether the legislation be similar to or in conflict with the federal law. Policies adopted by those charged with administering the federal law cannot be fully effectuated if opposing policies are adopted by those administering the state law, no matter how similar the two statutes may be on their face. The deliberate purpose of Congress to protect the civil liberties of aliens will be thwarted if the states are permitted to administer registration laws, like that of Pennsylvania, which fail to pro-

vide comparable safeguards. And the effect of subjecting aliens to a dual registration system must necessarily be to create confusion and resentment in their minds and thus to make more difficult of achievement the Congressional policy embodied in the federal statute.

The United States, therefore, has a direct interest in the present litigation. It is the position of the United States that the regulation of alien registration is exclusively the concern of the federal government, that state regulation in this field is invalid in the absence of express consent by Congress, and that, far from consenting to state legislation, Congress, by enacting the Alien Registration Act, exercised its authority to the entire exclusion of the states.

SUMMARY OF ARGUMENT

1. The Alien Registration Act of 1940, enacted by Congress subsequent to the entry of the decree below, has superseded the Pennsylvania registration statute. The federal act is a comprehensive law on the subject of the registration and identification of aliens; the Pennsylvania statute, rather than complementing the federal law, covers almost precisely the same ground. Although the obligations of the alien under the Pennsylvania statute are not necessarily incompatible with his obligations under the federal law, the full occupation of the field by Congress precludes enforcement of the state legislation.

The purposes of the federal statute can be fully achieved only by continuous centralized administration. If the states be permitted to administer independent statutes, the probable consequence would be to confuse aliens as to their duties under each of the separate enactments, with their different provisions, different regulations and different methods of administration. Confusion would, indeed, be worse confounded because of the fact that, unless local legislation is precluded, many municipalities and counties would in all likelihood establish registration requirements in addition to those prescribed by the states.

Moreover, the administration of the Pennsylvania statute might well conflict with the Congressional policy embodied in the federal law. The legislative background of the federal act shows that Congress was well aware that the registration device is susceptible of being used as a means of curtailing the liberties of loyal and law-abiding aliens and that, if so used, it would increase rather than minimize the evils of disaffection and disloyalty against which the Act is directed. Accordingly, Congress provided various safeguards in the Act to protect the civil liberties of aliens and to guard them against the harassment of intrusive police surveillance. The Pennsylvania statute contains no similar safeguards; to the contrary, it is fraught with the very dangers which Congress sought to prevent.

Even if the Pennsylvania statute contained all of the safeguards embodied in the federal Act, it

would be still be invalid as in conflict with the policy of Congress. Enforcement of the Congressional purpose to protect the civil liberties of aliens requires that the federal government retain the power to control and coordinate all activities of the officers in charge of registration and surveillance; this policy cannot be enforced if the states are permitted to enact and administer independent registration systems, whether for purely local ends or for some purpose which the states share in common with the nation.

2. Even apart from the effect of the Alien Registration Act of 1940, the states may not require the registration of alien residents without the express consent of Congress. Registration cannot be considered independently of the many other aspects of alien control. Title 8 of the United States Code contains a comprehensive and integrated system of immigration and naturalization laws and provides for the protection of the civil rights of aliens residing within our borders. The registration of aliens is part of the same field of regulation. It permits the federal government to ascertain the number of aliens illegally admitted and thus to determine the effectiveness of the immigration laws; it serves to reveal the presence of aliens abusing our hospitality and thus subject to deportation; and it results in the accumulation of a mass of information of great value in the framing of future naturalization laws and policies.

The state shares none of these interests. The purpose of its statute is simply to guard against subversive activities. While legislation directed toward the accomplishment of this end might be valid if imposed on all persons under the jurisdiction of the state, an entirely different question is presented when, in order to curb subversive activities, the state seeks to concern itself with the special problem of alien control. This special problem is one to which the Congress has specifically addressed its attention in the enactment of the immigration and naturalization laws. Further, it is one which must be reserved exclusively for federal action because it is directly related to the conduct of our foreign relations. The very reason for singling out aliens for control is the fact that their allegiance is to foreign governments. As in the case of the immigration and naturalization laws, therefore, control of subversive activities of aliens, as such, cannot be divorced from control of the foreign policies of the United States. And because the formulation and enforcement of foreign policy is a matter of exclusively national concern, it is Congress alone which may legislate with respect to the related matter of alien control.

Moreover, the question whether the value of a registration system for aliens is worth whatever risk of disloyalty or disaffection it might cause is a matter of national policy, to be determined by Congress. Before the enactment of the Alien Reg-

istration Act, it was the national policy to leave aliens free of such regulation; since the enactment of that statute, the policy has been otherwise. But plainly, the question being one of national policy, its determination is for Congress and not for the states.

The invalidity of the Pennsylvania statute is emphasized by the principle enunciated by this Court in *Truax* v. *Raich*, 239 U. S. 33, 39, that an alien admitted to the United States under federal law is admitted "with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." The Pennsylvania law would of necessity have a tendency to deter aliens from entering and abiding in the state, and this, as the court below concluded, may well have been one of its purposes. Such a limitation on the exercise of the alien's privilege, conferred by federal law, is no less invalid than an absolute prohibition.

3. The Pennsylvania statute is also invalid because it is in conflict with Section 16 of the Civil Rights Act of 1870, now appearing as Section 1977 of the Revised Statutes (8 U. S. C. § 41). This statute was enacted by Congress pursuant to the authority granted by Section 5 of the Fourteenth Amendment, to enforce the provisions of the amendment by appropriate legislation. R. S. § 1977 provides that all persons within the jurisdiction of the United States shall enjoy the same civil rights as

white citizens. The language of the statute, its legislative history, and the decisions construing it leave no doubt that its protection extends to aliens as well as to citizens. And the legislative history shows specifically that the statute was intended, among other things, to establish absolute equality with respect to freedom of movement. Since the Pennsylvania statute imposes a different system of regulation for aliens than for white citizens, and since it restricts the alien's freedom of movement, it is in contravention of R. S. § 1977.

ARGUMENT

I

THE ALIEN REGISTRATION ACT OF 1940 HAS SUPERSEDED THE PENNSYLVANIA REGISTRATION STATUTE

The court below held the Pennsylvania statute to be invalid because it sought to regulate a matter of exclusively national concern and because it unlawfully restricted the privilege to enter and abide in each of the states which Congress conferred on aliens when it permitted their admission. The decision of the court below was correct, as we show under Point II.

After entry of the judgment of the court below, Congress enacted the Alien Registration Act of 1940. It is our position that, entirely independent of the reasons for the invalidity of the Pennsylvania statute considered decisive by the court below, enforcement of the state act is precluded by

the enactment of the federal statute covering the same field.[1]

1. The power of Congress to provide by statute for the registration of resident aliens is not and cannot be questioned. Ample authority may be found in the plenary power of Congress to regulate the admission of aliens to the United States and to prescribe the conditions upon which they may be permitted to remain (*Head Money Cases*, 112 U. S. 580, 591, *et seq.*; *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 272–273; *Chy Lung* v. *Freeman*, 92 U. S. 275, 280; *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713–714)[2] or

[1] The effect of the federal act on the validity of the state statute may, and indeed must, be considered by this Court even though the Congressional enactment was adopted subsequent to the date the appeal was taken and probable jurisdiction noted. *Carpenter* v. *Wabash Ry. Co.*, 309 U. S. 23, 26–27; *United States* v. *The Schooner Peggy*, 1 Cranch 103, 110; *Watts, Watts & Co., Ltd.*, v. *Unione Austriaca di Navigazione*, 248 U. S. 9, 21; *Gulf, Colorado & Santa Fe Ry. Co.* v. *Dennis*, 224 U. S. 503, 505–506; *Crozier* v. *Fried, Krupp Aktiengesellschaft*, 224 U. S. 290, 302–303; *Dinsmore* v. *Southern Express Co.*, 183 U. S. 115, 120.

[2] This Court has indicated several sources of the power to regulate the admission and residence of aliens. *United States ex rel. Turner* v. *Williams*, 194 U. S. 279, 290. It may be founded on the grant of power to regulate foreign commerce (*cf. Head Money Cases*, 112 U. S. 580, 591; *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 270–274), or on the power to conduct the foreign relations of the United States (*cf. Chy Lung* v. *Freeman*, 92 U. S. 275, 279–280; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 711–712;

in the power to establish uniform naturalization laws (Art. I. sec. 8, cl. 3),[3] or, as the current crisis in international affairs serves to emphasize, in the power to provide for the national defense. Whatever the constitutional basis, however, the validity of such legislation has long been settled. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 714, 726.

The power, if any, of the states to enact similar legislation is at best subordinate to that of Congress and, in the absence of express Congressional consent, exercise of the power is necessarily precluded (see Point II, *infra* pp. 31–43). Here, far from giving its consent to state action, Congress has provided for full federal occupation of the field by enacting the Alien Registration Act.

2. The Alien Registration Act contains no express provision prohibiting the enactment of state legislation on the same subject, and it may be admitted that the Pennsylvania statute does not

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Nishimura Ekiu v. *United States*, 142 U. S. 651, 659), or it may arise as an incident of the sovereignty of the United States (*cf. Chae Chan Ping* v. *United States*, 130 U. S. 581 603–609; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 705, 711; *Wong Wing* v. *United States*, 163 U. S. 228, 231; *Fiaco* v. *Forbes*, 228 U. S. 549, 556–557; *Mahler* v. *Eby*, 264 U. S. 32, 39).

[3] The existence of a requirement of registration may stimulate aliens to become citizens (86 Cong. Rec., June 22, 1940, at 13467), and the information acquired in the administration of a registration system may be useful in framing amendments to the present naturalization laws.

directly conflict with the terms of the federal law. But the subject matter of the Congressional act, the type and extent of the federal regulation, the surrounding circumstances, and the necessary effect of dual legislation, disclose an unmistakable purpose of Congress to occupy the field and to preclude legislation by the states on the same subject.

The federal statute is a comprehensive law on the subject of the registration and identification of aliens; the Pennsylvania statute, rather than complementing the federal law, covers almost precisely the same ground. There are, of course, differences in the statutes: the exemptions and the penalties differ, and the state act does not expressly envisage fingerprinting, while the federal act does not require registered aliens to carry identification cards. But the general objectives of the statutes are identical, and both are systematic and complete regulations of the subject. The federal act is as general in its application as the state law, and there are no exemptions from its coverage which might constitute a legitimate subject of separate state regulation. And the scope of the information which may be obtained from registrants is as broad under the federal statute as under that of the state.

The enactment by Congress of this comprehensive and integrated alien registration system precludes the exercise of any concurrent authority by the states. *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59, 63; *Reid* v. *Colorado*, 187

U. S. 137, 146–147; *Easton* v. *Iowa*, 188 U. S. 220, 23[illegible], 238; *Oregon-Washington Rd. & Navig. Co.* v. *Washington*, 270 U. S. 87, 99–101; *Erie R. R. Co.* v. *New York*, 233 U. S. 671; *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491, 505–506; *Northern Pac. Ry. Co.* v. *Washington*, 222 U. S. 370; *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147; *Second Employers' Liability Cases*, 223 U. S. 1, 55; *Lindgren* v. *United States*, 281 U. S. 38, 45–46; *New York Central & Hudson River R. R.* v. *Hudson County*, 227 U. S. 248, 263–264; *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439; *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 265-266; *Gavit, The Commerce Clause*, § 117. It is immaterial that the obligations of the alien under the federal and Pennsylvania enactments are not necessarily incompatible. As Mr. Justice Holmes observed in *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604, "When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition * * *." [4] And it is likewise imma-

[4] Accord: *People* v. *Compagnie Generale Transatlantique*, *supra*; *Erie R. R. Co.* v. *New York*, *supra*; *New York Central R. R.* v. *Winfield*, *supra*; *New York Central & Hudson R. R. Co.* v. *Tonsellito*, 244 U. S. 360; *Southern Ry.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446–448; *Pennsylvania R. R. Co.* v. *Pub. Serv. Comm.*, 250 U. S. 566, 569; *Missouri Pacific R. R. Co.* v. *Porter*, 273 U. S. 341, 346; *Gilvary* v. *Cuyahoga Valley Ry.*, 292 U. S. 57, 60–61; *cf. Gulf, Colorado & Santa Fe Ry.* v. *Hefley*, 158 U. S. 98, 105.

terial that the state law was enacted before the federal law; once the federal government occupies the field, existing state legislation is superseded and further state legislation is prevented. *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446, 447; *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59, 63; *Port Richmond, etc., Ferry Co.* v. *Board of Chosen Freeholders*, 234 U. S. 317, 330; *Southern Ry Co.* v. *Reid*, 222 U. S. 424.

The decision in *People* v. *Campagnie Generale Transatlantique, supra*, would seem to be controlling. In that case, this Court held invalid one of the series of New York statutes imposing taxes upon alien immigrants entering the Port of New York, upon the ground, *inter alia*, that the federal Act of August 3, 1882, c. 376, 22 Stat. 214, imposing a similar tax upon immigrants, "covers the same ground as the New York statute, and they cannot coexist."

The case of *Gilbert* v. *Minnesota*, 254 U. S. 325, is not opposed. In that case this Court held that the Espionage Act of June 15, 1917, did not supersede a war-time statute of Minnesota imposing criminal penalties for discouraging enlistment in the armed forces of the United States. The decision was placed upon the ground that the states have an interest in promoting the national security and that the state statute was merely in aid of the

federal purposes. *Id.* at 331. The case can have no application to a situation like that here presented, where enforcement of the federal statute requires continuous centralized administration and any independent and uncoordinated effort by state officials to aid in its enforcement could only result in chaos and confusion. See *infra*, pp. 26–28.

3. Not only is the Pennsylvania statute unenforceable because its field of operation is fully occupied by the Alien Registration Act, but it is also unenforceable because it is in conflict with the Congressional policy embodied in the federal law. The legislative background of the Act shows that Congress was well aware that the registration device is susceptible of being used as a means of curtailing the liberties of loyal and law-abiding aliens and that, if so used, it would increase rather than minimize the evils of disaffection and disloyalty against which the Act is directed. Accordingly Congress provided various safeguards in the Act to protect the civil liberties of aliens and to guard them against the vexation of intrusive police surveillance. The Pennsylvania statute contains no similar safeguards; to the contrary, it is fraught with the very dangers which Congress sought to prevent.

Since at least 1917, bills providing for the registration of aliens have been regularly introduced

in every Congress.[5] Notwithstanding some official support,[6] every such proposal was rejected by Congress prior to the adoption of the Alien Registration Act of 1940, most of them dying in committee.[7] There can be no doubt that the basis for the

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[5] 64th Cong., 2d Sess.: H. R. 20936.
65th Cong., 1st Sess.: H. R. 4959; 3d Sess.: H. R. 13445.
66th Cong., 1st Sess.: H. R. 3911; H. R. 563.
67th Cong., 2d Sess.: S. 2882, S. 3403, H. R. 10860; 4th Sess.: H. R. 13417, H. R. 14430.
68th Cong., 2d Sess.: H. R. 10469, H. R. 11887.
69th Cong., 1st Sess.: H. R. 102, H. R. 5583.
70th Cong., 1st Sess.: H. R. 5473; 2d Sess., S. 5093 (voluntary registration).
71st Cong., 1st Sess.: S. 1278 (voluntary registration); 2d Sess.: H. R. 9101, H. R. 9147, H. R. 10207.
72d Cong., 1st Sess.: H. R. 10669; 2d Sess.: H. R. 14712.
73d Cong., 1st Sess.: H. R. 2841.
74th Cong., 1st Sess.: H. R. 9175; 2d Sess.: H. R. 11740, H. R. 11172, H. R. 12652.
75th Cong., 1st Sess.: H. R. 1-1, H. R. 1980, H. R. 4355, S. 1364; 2d Sess.: S. 3154.
76th Cong., 1st Sess.: H. R. 130, H. R. 3392, H. R. 5138, H. R. 5196, H. R. 7379; S. 408, S. 1470, S. 2632, S. 2830.

[6] Secretary of Labor, Annual Report for year ending June 30, 1922; Secretary of Labor, Annual Report for year ending June 30, 1925, pp. 119–120; Commissioner General of Immigration, Annual Report for year ending June 30, 1925, pp. 13, 26; *cf.* Kohler, *The Registration of Aliens* (1926), pp. 3, 4, 22, 33, 40, 46, 89 (citing approval by Presidents Harding and Coolidge).

[7] S. 5093, 70th Cong., 2d Sess., providing for so-called voluntary registration of aliens, was passed by the Senate, almost without debate. 70 Cong. Rec. 2090. S. 1278, a similar bill introduced into the 71st Congress, was also passed without debate, 72 Cong. Rec. 7209, but the vote was immediately reconsidered, *ibid*, and the bill never came to a final test. See Kohler, *Immigration and Aliens in the United States* (1936), p. 366.

rejection of these proposals was the opposition, then current in and out of Congress, to all plans for the registration of aliens.[8] The action of Congress reflected a widespread conviction that registration was closely akin to the systems of police surveillance of certain European countries, and that to subject aliens to such surveillance might lead to grave abuses in administration[9] and engender disaffection and disloyalty.[10]

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[8] See comments of Representatives Celler and Sabath on the pigeonholing of the various registration bills, 70 Cong. Rec. 189, 190. *Cf.* Kohler, *The Registration of Aliens*, *passim*; Kohler, *Immigration and Aliens in the United States*, 340–391.

[9] See 87 Cong. Rec. 1675–6; 70 Cong. Rec. 189–190; 72 Cong. Rec. 3886–3893; *Hearings before Subcommittee of Senate Committee on Immigration on S. 1364*, 75th Cong., 1st Sess. (1937), 4 *et seq.* (letter of Secretary of Labor); Kohler, *The Registration of Aliens*, *passim*; Kohler, *Immigration and Aliens in the United States*, *supra*, 340–391. It was believed that the administration of alien registration statutes might involve undue harassment of aliens and even official corruption and other illegal practices. *Hearings*, *supra*; Kohler, *The Registration of Aliens*, *supra*, 30, 32, 43, 88–89, 92; Kohler, *Immigration and Aliens in the United States*, *supra*, 372, 373, 381, 384, 385. Reference was made to irregularities in the administration of the Chinese Registration Act of 1892. Kohler, *The Registration of Aliens*, *supra*, 22–25, 92, 130–132. It was also feared that interference with the rights of labor might result. *Hearings*, *supra*; Kohler, *The Registration of Aliens*, *supra*, 43, 61; Kohler, *Immigration and Aliens in the United States*, *supra*, 383, 386, 387, 388.

[10] See *Hearings before Subcommittee of Senate Committee on Immigration on S. 1364*, 75th Cong., 1st Sess. (1937), 4 *et seq.* (letter of Secretary of Labor); Kohler, *The Registration*

In enacting the Alien Registration Act of 1940, the Congress was careful to guard against these evils. The Act provides that the registration and fingerprinting shall be done at the Post Office (Section 33 (a)), thus avoiding any suggestion of police administration. There is no provision for the issuance of an identification card and no requirement that the alien shall carry with him proof of registration. The significance of this omission is emphasized by the regulations issued by the Commissioner of Immigration and Naturalization, which, after providing for the issuance of a receipt to the alien on registration, specifically state that the alien is under no duty or obligation to carry the receipt on his person and that he shall suffer no penalty or disadvantage from failing to do so, Code of Federal Regulations, Title 8, § 29.4 (p), 5 Fed. Reg. 2840. To insure that the Act will not be used to harass loyal aliens in the exercise of their civil liberties, the Congress expressly provided that all registration and fingerprint records shall be "secret and confidential" and shall be made available only to such persons as the Commissioner may designate, and then only with the approval of the Attorney General. Section 34 (b). Finally, Congress provided that the penalties of the Act may be invoked only in cases of "wilful" violations. Section 36.

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of Aliens, supra, 45 48, 73–75, 81–83, 84–85; Kohler, *Immigration and Aliens in the United States, supra*, 370, 389.

The Act thus embodies the deliberate judgment of Congress that the protection of the civil liberties of loyal and law-abiding aliens is a matter of national concern and that the harassment of such aliens is not only unnecessary to the national defense but would aggravate the dangers of disaffection and disloyalty which the statute was intended to suppress. The intention of Congress has been so construed in the administration of the Act.[11]

The Pennsylvania statute contains no similar protection of the rights of aliens and its provisions are susceptible of administration in a manner directly conflicting with the policy of Congress. The legislative history of the statute shows that it was

[11] The administrative officials in charge of federal registration have repeatedly cautioned against persecution, undue duress, or any action calculated to suggest that law-abiding and loyal aliens are unwelcome, and they have emphasized the danger of disaffection and disloyalty which could result from such action. See Statement of the President upon signing the Alien Registration Act, 1940; Message of the President to the Federal-State Conference on Law-Enforcement Problems of National Defense; Address of Attorney General Jackson to the Conference; Address delivered by Earl G. Harrison, Director of Registration, Immigration and Naturalization Service, over the radio, August 7, 1940; Address delivered by Lemuel B. Schofield, Special Assistant to the Attorney General in charge of the Immigration and Naturalization Service, delivered over the radio, August 15, 1940; Address delivered by Solicitor General Biddle over the radio, August 25, 1940; Address of Earl G. Harrison to the Philadelphia Council of Social Agencies, September 6, 1940. Mimeographed copies of these statements have been filed with the Clerk of this Court.

deliberately framed so as to facilitate police surveillance of aliens engaged in allegedly subversive activities (23 Pa. Legis. Jour. 807, 808, 809, 1339, 4709).[12] For this purpose all aliens not expressly exempted must register annually and furnish such information as the State Department of Labor and Industry may specify.[13] The information so obtained need not be treated as confidential; the state officials are free to collect a dossier concerning every alien and then make it available to employers, or to other persons without official interest, or to the public generally. To further the purpose of surveillance, all aliens not expressly exempt are subject to the irksome and harassing requirement of carrying an identification card at all times and of displaying it to the police authorities upon demand. Failure to register, to carry the identification card, or to produce the identification card upon proper demand is occasion for fine or imprisonment or both. And these criminal penalties may

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[12] Mr. Taylor, the principal sponsor of the bill in the House of Representatives, explained its purpose as follows: "If he [the alien] is a member of a subversive group, then we want to know where he is so that we can put a finger on him when we want him." See 23 Pa. Legis. Jour. 1339.

[13] While the statute does not expressly require notice of any change of address within the state during the year, there can be no doubt, in view of the purpose of the Act, that such a requirement could be imposed under the unlimited authority of the Department to make regulations for the enforcement of the Act.

be imposed, whether the violation is wilful or due to innocent neglect.[14]

It is apparent that under this statutory scheme, the alien residents of Pennsylvania are subject to the constant threat of intrusive surveillance by the state police. Whether or not aliens will frequently be required to display their identification cards and repeatedly be subjected to fine or imprisonment for failure to do so must depend upon the policy of the officers in charge of enforcement; under the statute, those officers have the power, if they will to exercise it, to subject aliens whom they may for any reason deem undesirable, to constant harassment. The Act might, of course, be used solely to curb subversive activities (see 23 Pa. Legis. Jour. 1339), but there is nothing in its terms to prevent its use as a means of curbing the legitimate activities of labor leaders or of other loyal and law-abiding aliens (see 23 Pa. Legis. Jour. 5189).

The extent of the restrictions imposed upon aliens by the state law must, of course, be measured not merely by the necessary operation of the statute, but also by what may be done under its authority. Cf. *Chy Lung* v. *Freeman*, 92 U. S. 275. The aliens

[14] The provision for penalizing negligent as well as wilful violations of the statute appears to have been deliberately framed. A provision of the bill as originally introduced, which imposed penalties for the employment of an unregistered alien, was expressly amended to apply only to "wilful" violations (see 23 Pa. Legis. Jour. 751–752).

subject to the Pennsylvania statute are a politically helpless minority, whose civil liberties Congress has determined must be protected against undue invasion in the interests of fair dealing and national security. The protection of the federal law, like the protection of the Bill of Rights in the federal Constitution, extends against state laws which authorize, as well as against those which require, undue intrusion upon such civil liberties. Cf. *Thornhill* v. *Alabama,* 310 U. S. 88; *Carlson* v. *California,* 310 U. S. 106.

Moreover, even if the Pennsylvania statute contained all of the safeguards embodied in the federal act, it would still be invalid as in conflict with the policy of Congress. Enforcement of the Congressional purpose to protect the civil liberties of aliens requires that the federal government retain the power to control and coordinate all activities with respect to registration and surveillance; this policy cannot be enforced if the states are permitted to enact and administer independent registration systems, whether for purely local ends or for some purpose which the states share in common with the nation.

Furthermore, if the states were permitted to administer independent statutes, the probable consequence would be to confuse the aliens as to their duties under each of the separate enactments, with their different provisions, different regulations,

and different methods of administration.[15] Confusion would, indeed, be worse confounded because of the fact that, unless local legislation is precluded, many municipalities and counties would in all likelihood establish registration requirements in addition to those prescribed by the states. That this is a real and not a hypothetical danger is shown by the analysis in Appendix C, *infra*, pp. 60–63, of the various state, county, and municipal statutes, ordinances and executive orders throughout the country which require the registration of aliens. This practical situation, of which Congress must have been aware, impels the conclusion that in enacting the federal statute Congress intended to preclude administration of all local registration laws.

In this connection it is of significance that almost all responsible state officials have agreed on the desirability of a single registration system. The Federal-State Conference on Law-Enforcement Problems of National Defense, held in Washington, D. C., on August 5 and 6 and attended by 230 officials from 46 states, the District of Columbia and the federal Government, unanimously agreed that "Federal registration and identification of aliens are desirable steps to secure uniformity and avoid confusion"; that the states and

[15] See to this effect the statement of Attorney General Jackson in his address to the Federal-State Conference on Law-Enforcement Problems of National Defense, copies of which have been filed with the Clerk of this Court.

municipalities should "rely on the Federal Act in order to secure uniformity and avoid confusion"; that "the Federal Government could most effectively assist the states by making available to responsible state officials under appropriate conditions and safeguards," the results of the federal registration in each state; that the state officials could assist in the federal registration by "conveying information to prospective registrants" and "overcoming their fears and suspicions"; and that "the joint task of the Federal and State Governments is to reassure the alien that registration is a friendly act, an effort to identify those who are friendly to our institutions, and to spare them from harassment and persecution." [16]

Gilbert v. *Minnesota,* 254 U. S. 325, discussed above in another aspect (see *supra,* pp. 18–19), is not opposed to the Government's contention. The federal espionage act involved in that case in no way manifested the judgment of Congress that the administration of similar state legislation might produce disaffection or otherwise jeopardize national interests, and the Court found no evidence of any necessary or potential conflict between the federal and state enactments on the same subject.

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[16] The report, it is true, also stated the belief of the states "that they still have the right to register all residents for state purposes" regardless of the outcome of the present litigation.

Mimeographed copies of the report from which the quotations are taken have been filed with the Clerk of this Court.

4. Nothing in the scanty debates in Congress or in the committee reports illumines the legislative intention concerning state action. But the President disclosed his understanding that the field had been completely occupied in a statement issued contemporaneously with his signing of the bill,[17] and the officials charged with administering the Act have taken the same position.[18] A formal statement issued by the President upon completing his share in the legislative process is, we believe, of importance in determining the legislative intention to preclude or permit state action. See Jones, *Statutory Doubts and Legislative Intention* (1940) 40 Col. L. Rev. 957, 968, n. 40; *cf. United States* v. *Dickerson,* 310 U. S. 554. And contemporaneous administrative construction of a new and untried statute is also entitled to weight, especially in the absence of any contradictory evidence.

[17] The President stated: "The only effective system of control over aliens in this country must come from the Federal Government alone. This is as true from a practical point of view as it is from a legal and constitutional point of view. Since Congress, by the act, has attempted to provide a single and uniform method of handling the difficult problem of alien registration in this country, it seems to me that attempts by the States or communities to deal with the problem individually will result in undesirable confusion and duplication." See N. Y. Times, June 30, 1940, Sec. I, p. 5; see also Message of the President to the Federal-State Conference on Law-Enforcement Problems of National Defense, cited in note 11, p. 23, *supra.*

[18] See note 11, p. 23, *supra.*

Fawcus Machine Co. v. *United States,* 282 U. S. 375, 378; *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315; *Mintz* v. *Baldwin,* 289 U. S. 346, 351.

5. There is no occasion in this case to consider to what extent the states retain the power to enact census legislation for local purposes. Cf. *City of New York* v. *Miln,* 11 Pet. 102. The Pennsylvania registration law extends far beyond any census purpose, as the court below held (R. 26); indeed, the state had adopted an alien census act prior to the enactment of its alien registration law.[19] Far from being a census act, the avowed purpose of the registration law, as well as the necessary effect of its operation, is to facilitate police surveillance of the activities of resident aliens. It is, therefore, pre-

[19] A Pennsylvania statute (Pa. Stats. Ann. [Purdon's Supp.], Tit. 24, sec. 1451) requires school officials, in 1938, 1945, and each ten years thereafter, to enumerate, by house-to-house canvass, "all persons twenty-one or more years of age resident within their district who are not citizens of the United States of America, giving their full name, age, sex, nationality, place of residence in school district, whether declarants, and whether petitioners for naturalization."

Some states have enacted statutes, akin to census acts, requiring the enumeration of aliens by officials or employers, without active participation by the alien. Mass. Ann. Laws (Supp.), c. 51, secs. 4, 7 (women, soldiers, sailors, persons subject to poll tax also listed); Mont. Rev. Codes (1935), sec. 3040 (employers to report alien employees quarterly); S. D. Sess. Laws 1935, c. 16, sec. 1 (assessors to list aliens); Utah Rev. Stats. (1933), sec. 75-28-6 (aliens subject to attendance at Americanization schools to register annually).

cisely the type of legislation which Congress intended to preclude.

II

APART FROM THE EFFECT OF THE ALIEN REGISTRATION ACT OF 1940, THE STATES MAY NOT REQUIRE THE REGISTRATION OF ALIEN RESIDENTS WITHOUT THE EXPRESS CONSENT OF CONGRESS.

The court below decided the present case prior to the enactment by Congress of the Alien Registration Act. Its holding that the Pennsylvania statute was unconstitutional was based in part upon the conclusion that the state law encroached upon a field reserved exclusively to federal action. This decision, we believe, was plainly correct.

1. The regulation of the relationship between alien residents and the Government is a matter of peculiar delicacy and gravity; the twin objectives of securing loyalty to our institutions by the vast alien majority and at the same time guarding against disloyalty to those institutions by the small alien minority can be achieved only by the formulation of a national policy enforced under unified control. Such a policy could not be formulated, much less enforced, if the various states were allowed to impose conditions, such as those embodied in the Pennsylvania statute, upon the liberty of aliens who reside within their borders.

The registration of aliens residing within the United States, or within a particular state, cannot be considered independently of the many other as-

pects of alien control. Title 8 of the United States Code contains a comprehensive and integrated system of immigration and naturalization laws, regulating who may enter the country and under what conditions (Secs. 100–299), who shall be deported from the country and for what causes (Secs. 154–157), and who shall be entitled to apply for citizenship and under what terms (Secs. 1–18, 351–416). This title further provides for the protection of the civil rights of aliens while residing within our borders (Sec. 41; see Point III, *infra*, pp. 43–49). The registration of aliens is part of the same field of regulation. It permits the federal government to ascertain the number of aliens illegally admitted to the country and thus to determine the effectiveness of the immigration laws; it serves to reveal the presence of aliens abusing our hospitality and thus subject to deportation; and it results in the accumulation of a mass of information of great value in the framing of future naturalization laws and policies.

The state shares none of these interests. The purpose of its statute is simply to guard against subversive activities (see pp. 23–24, *supra*). While legislation directed towards the accomplishment of this purpose might be valid if imposed upon all persons within the jurisdiction of the state, an entirely different question is presented when, in order to curb subversive activities, the state seeks to concern itself with the special problem of alien control. This special problem, as we have shown, is

one to which the Congress has specifically addressed its attention in the enactment of the immigration and naturalization laws. Further, it is one which must be reserved exclusively for federal action because it involves the allegiance of aliens to foreign powers and is therefore directly related to the conduct of our foreign relations. Recent history has strongly underlined the relationship between the subversive activities of resident aliens and the activities of the foreign powers to which they owe allegiance. Indeed, the very reason for singling out aliens for control is the fact that their allegiance is to foreign governments. As in the case of immigration and naturalization laws, therefore, control of the subversive activities of aliens, as such, cannot be divorced from control of the foreign policies of the United States. And because the formulation and enforcement of foreign policies is a matter of exclusive national concern, it is Congress alone which may legislate with respect to the related matter of alien control.[20] Cf. *Henderson* v. *Mayor of City of New York,* 92 U. S. 259, 273; *Holmes* v. *Jennison,* 14 Pet. 540, 570; *United States* v. *Rauscher,* 119 U. S. 407, 412-414.

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[20] The provisions of alien registration acts may themselves affect the conduct of our foreign affairs. Stringent registration statutes might well involve the United States in controversy with other countries. Such a statute "is in fact, in an eminent degree, a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected, whether the rule be

Moreover, the question whether the value of a registration system for aliens is worth whatever risk of disloyalty or disaffection it might cause is a matter of national policy, to be determined by Congress. Before the enactment of the Alien Registration Act, it was the deliberate policy of Congress to leave aliens free of such regulation (see *supra* pp. 19–21); since the enactment of that statute, the policy has been otherwise. But plainly, the question being one of national policy, the determination thereof is for Congress and not for the states. Whether Congress has kept silent, or, in speaking, has fully occupied the field, as by the Alien Registration Act of 1940, the states are wholly without power to interfere. *Henderson* v. *Mayor of City of New York*, 92 U. S. 259; *People*

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established by treaty or by legislation." *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 273. *Cf. Chy Lung* v. *Freeman*, 92 U. S. 275, 280. Conceivably, some state statutes might violate the terms of treaties with foreign countries; the registration fee imposed by the Pennsylvania Act, for example, may conflict with the common treaty provision that foreign nationals in our territory are not to be subject to any special taxes or imposts. Gibson, *Aliens and the Law* (1940, 31, 169–170). Registration provisions themselves may, as appellees here contend, conflict with treaty guaranties of equality of treatment and of the right to sojourn, travel, and work. Gibson, *op. cit. supra*, 22–25, 165–166; cf. President Arthur's Message Vetoing the Chinese Exclusion Act of 1882, 8 Richardson, *Messages and Papers of the Presidents*, 116–117. The United States, however, seems not to have objected to the registration by other countries of American citizens residing therein. 4 Moore, *Digest of International Law*, § 542; 6 Moore, *id.*, 316–318.

v. *Compagnie Generale Transatlantique,* 107 U. S. 59; *Cooley* v. *Board of Wardens,* 12 How. 299, 318–319; *Welton* v. *Missouri,* 91 U. S. 275, 282; *Hall* v. *De Cuir,* 95 U. S. 485, 490; *County of Mobile* v. *Kimball,* 102 U. S. 691, 697; *Bowman* v. *Chicago and Northwestern Ry. Co.,* 125 U. S. 465, 481, 485; *Covington and Cincinnati Bridge Co.* v. *Kentucky,* 154 U. S. 204, 212; *The Minnesota Rate Cases,* 230 U. S. 352, 399, 400; *Sanitary District* v. *United States,* 266 U. S. 405, 426.

The decisions holding that the states may legislate in furtherance of national purposes, shared by the states, when the state legislation does not conflict with any federal policy, are not in point. See *Halter* v. *Nebraska,* 205 U. S. 34 (state may prohibit desecration of national flag); *Minersville School District* v. *Gobitis,* 310 U. S. 586; cf. *Gilbert* v. *Minnesota,* 254 U. S. 325. The state laws considered in those cases were directed towards the implementation, and not the determination, of national policy. Moreover, the legislation there involved was related to the loyalty of all persons to the nation, and therefore to the state, and did not single out aliens for special treatment. As we have pointed out, the fact that the states have power to enforce laws seeking to enhance the loyalty of all persons to the nation does not mean that they have power to concern themselves with the special problem of the loyalty of aliens to the nation.

Henderson v. *Mayor of City of New York, supra,* lends strong support to the position that the sub-

ject of alien registration is reserved exclusively for federal regulation. That case involved a New York statute requiring the master or owner of a vessel to give a bond in the sum of $300 for every passenger landed in the state, conditioned to indemnify the local authorities against any expense for the relief or support of such person, but provided that the bond could be commuted by paying the sum of $1.50 for each of the passengers. In the event of failure to give bond, or pay the $1.50 in lieu thereof, a penalty of $500 was imposed for each pauper. The statute was sought to be justified as a means of providing for persons landing in the state without means of support and who might become charges of the state. The Court concluded that the purpose of the statute, measured by its effect, was to levy a tax of $1.50 on each immigrant passenger and, in this view, held the statute invalid. Emphasing the "vast interest" of the nation in immigration and the relation of the burden of the tax to foreign commerce and international relations, the Court concluded (92 U. S. at 273):

> A regulation which imposes onerous, perhaps impossible, conditions on those engaged in active commerce with foreign nations, must of necessity be national in its character. It is more than this; for it may properly be called *international*. It belongs to that class of laws which concern the exterior relation of this whole nation with

other nations and governments. * * * It is in fact, in an eminent degree, a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected, whether the rule be established by treaty or by legislation.

It is equally clear that the matter of these statutes may be, and ought to be, the subject of a uniform system or plan. The laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans, and San Francisco. * * *

The same reasoning was employed in the only two cases, other than the present one, in which the validity of state alien registration laws was considered. In 1891, California enacted a statute (Cal. Stat. 1891, c. 140, pp. 185, *et seq.*) "to prohibit the coming of Chinese persons into the State, whether subjects of the Chinese Empire or otherwise, and to provide for registration and certificates of residence, and determine the status of all Chinese persons now resident of this State, and fixing penalties and punishments for violation of this Act, and providing for deportation of criminals." All Chinese in California were required to secure certificates of residence (which were to contain a photograph of the registrant) and to exhibit this certificate, on demand, to any peace officer and also, upon traveling, to any ticket agent or conductor. Failure to obtain and carry such a cer-

tificate was an offense punishable by imprisonment or deportation. In a summary one-page opinion, in the case of *Ex parte Ah Cue,* 101 Cal. 197, the supreme court of the state struck the statute down as in conflict with the exclusive power of the federal government.[21]

Forty years later, the State of Michigan sought to place similar restrictions upon all aliens. Laws 1931, Act 241 (Mich. Stats. Ann., §§ 18.41–18.57). The statute required certificates of legal residence to be secured from the state commissioner of public safety, denied the right of employment to any alien without a certificate, and imposed penalties for failure to secure one. The act also directed the exclusion from the state or deportation of aliens illegally in the United States. In *Arrowsmith* v. *Voorhies,* 55 F. (2d) 310 (E. D. Mich.), a three-

[21] The court said (pp. 197–198): "The main purpose of this act, as shown by its title and by its provisions, is to prohibit Chinese persons from coming into the state, and also to prescribe terms and conditions upon which those residing within the state shall be permitted to remain or travel between different points in the state. The power thus attempted to be exercised is one which belongs exclusively to the general government by virtue of its authority to regulate commerce with foreign nations (section 8, article 1, of the Constitution of the United States), relating, as it does, to a subject matter in which all the people of the United States are concerned, and not alone those of the state of California. Congress, in the exercise of its constitutional power, has prescribed the terms upon which the Chinese now here shall be permitted to remain within the United States; and it is beyond the power of the state to impose any further conditions."

judge district court held that the statute, in all of its phases, trenched upon the exclusive jurisdiction of the federal government.

2. The invalidity of the Pennsylvania statute is emphasized by the principle enunciated by this Court in *Truax* v. *Raich*, 239 U. S. 33, 39, that an alien admitted to the United States under federal law, as was respondent Travaglini, is admitted "with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." See also *People* v. *Crane*, 214 N. Y. 154, 169, affirmed, 239 U. S. 195; cf. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 714; *Zakonaite* v. *Wolf*, 226 U. S. 272, 275. *Truax* v. *Raich* involved an Arizona statute providing that not less than 80 percent of the employees of any person or corporation employing more than five individuals should be qualified electors or native born citizens. In an action brought by an alien resident, not a qualified elector, to enjoin enforcement of the law upon the ground that it would deprive him of his livelihood, this Court held that the statute was unconstitutional because it violated the Fourteenth Amendment. In the course of its opinion, the Court stated (p. 42):

> The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they

> cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality.

While *Traux* v. *Raich* dealt specifically with a statutory restriction upon the right of an alien to earn a living, the principle of the case is applicable here. Like the Arizona statute, the probable effect of the Pennsylvania law would be to deter all aliens from entering and abiding in the state, and this, as the court below concluded (R. 31), may well have been one of its purposes. Such a limitation on the exercise of the alien's privileges, conferred by federal law, is no less invalid than an absolute prohibition. State taxes on the landing of immigrants have been held to constitute an unlawful burden on foreign commerce although the measures fell far short of excluding aliens. *Henderson* v. *Mayor of City of New York*, 92 U. S. 259; *Chy Lung* v. *Freeman*, 92 U. S. 275; *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59. Similarly a state enactment restricting the exercise of the alien's privilege of residence and movement may likewise be invalid even though it does not entirely preclude enjoyment of the privilege.

It should be noted, too, that the Pennsylvania statute would have an adverse effect upon the free movement through Pennsylvania of aliens residing in other states. Such aliens, while traveling in Pennsylvania, would have to have with them at all times convincing proof of residence without the state in order to avoid danger of arrest for failure to carry and produce an identification card. A restriction of this type is totally inconsistent with the privilege of free movement throughout all of the United States conferred upon aliens who are lawfully admitted pursuant to the provisions of federal law.

3. The authorities relied upon by appellants are not opposed to our position. In *City of New York* v. *Miln*, 11 Pet. 102, the Court sustained a state statute which required the masters of vessels entering the Port of New York to make a written report of the name, place of birth, age, occupation, and last legal settlement of every passenger aboard. The *Miln* case might furnish some precedent for the validity of state census acts, but its authority was questioned in *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 266, 269–270, where it was specifically held inapplicable to a burdensome regulation of the landing if immigrants. It likewise has no bearing on the validity of burdensome restrictions on the residence and movements of aliens after their admission. As the court below observed,

the Pennsylvania registration statute is much more than a census act (R. 26). The statute imposes severe restrictions on the residence and movements of aliens and subjects them as a class to constant police surveillance. And, as previously pointed out, any state registration act may be used to curtail the liberties of loyal and law-abiding aliens.

The other cases relied on by appellants are even more remote. Many involve the right to public employment or to share in natural resources, and are governed by the elementary principle that the public property of a state belongs to its citizens alone. *Patsone* v. *Pennsylvania,* 232 U. S. 138; *Heim* v. *McCall,* 239 U. S. 175; *People* v. *Crane,* 214 N. Y. 154, affirmed, 239 U. S. 195. Some concern the use or possession of land, a subject always held to be of peculiarly local concern. *Terrace* v. *Thompson,* 263 U. S. 197; *Frick* v. *Webb,* 263 U. S. 326; *Webb* v. *O'Brien,* 263 U. S. 313. Others involve the power of the states to exclude aliens from certain occupations affecting the public health and morals, likewise a matter of local concern. *Ohio ex rel. Clarke* v. *Deckebach,* 274 U. S. 392; *Anton* v. *Van Winkle,* 297 Fed. 340 (D. Ore.) (operation of pool rooms). The question in all these cases was whether the statute denied the alien the protection afforded by the Fourteenth Amendment or whether it conflicted with the provisions of particular treaties. Apart from the asserted conflict with treaty provisions, no contention was made in any of the cases that

the statute involved related to a matter of paramount national concern or that it materially curtailed the alien's privilege to enter and abide in the states.[22]

III

THE PENNSYLVANIA ALIEN REGISTRATION ACT IS IN CONFLICT WITH SECTION 16 OF THE CIVIL RIGHTS ACT OF 1870

Section 5 of the Fourteenth Amendment gave Congress the power to enforce the provisions of the amendment by appropriate legislation. In accordance with this grant, Congress enacted Section 16 of the Civil Rights Act of 1870 (16 Stat. 140, 144), now appearing as Section 1977 of the Revised Statutes (8 U. S. C., § 41). This section provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punish-

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[22] Many states, it is true, have enacted legislation barring aliens from a large number of common professions and occupations, but there is no occasion here to consider the validity of such statutes. They are discussed in Note (1935) 83 U. of Pa. L. Rev. 74; Note (1939) 39 Col. L. Rev. 1207, 1219–1223; Note (1940) 17 N. Y. U. L. Q. Rev. 242; Fellman, *The Alien's Right to Work* (1938), 22 Minn. L. Rev. 137; Gibson, *Aliens and the Law* (1940).

ment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.[23]

The constitutional validity of this statute has often been sustained. *Strauder* v. *West Virginia,* 100 U. S. 303, 311–312; *Virginia* v. *Rives,* 100 U. S. 313, 317–318; *Neal* v. *Delaware,* 103 U. S. 370, 385–386; *Gibson* v. *Mississippi,* 162 U. S. 565, 580; *cf. Buchanan* v. *Warley,* 245 U. S. 60, 78. And there can be no doubt that its protection extends to aliens as well as to citizens. *Yick Wo v. Hopkins,* 118 U. S. 356, 369; *United States* v. *Wong Kim Ark,* 169

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[23] Section 24 (14) of the Judicial Code, 28 U. S. C., § 41 (14), under which federal jurisdiction is invoked here, was evidently intended, as its wording shows, to confer jurisdiction to vindicate the rights secured by R. S. § 1977. It confers upon the district courts original jurisdiction of "all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law * * * of any State, * * * of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

The Criminal Code contains a cognate provision to R. S. § 1977. R. S. § 5510, 18 U. S. C., § 52, provides as follows: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

U. S. 649, 695–696; *In re Parrott*, 1 Fed. 481, 508 (C. C. D. Cal.); *Fraser* v. *McConway & Torley Co.*, 82 Fed. 257 (C. C. D. Pa.); *Whitfield* v. *Hanges*, 222 Fed. 745, 74 (C. C. A. 8th); *Martinez* v. *Fox Valley Bus Lines*, 17 F. Supp. 576 (N. D. Ill.); *In re Kotta*, 187 Cal. 27, 31.

The Pennsylvania statute is in plain conflict with the mandate of the Congressional act. The annual registration fee exacted from the alien is clearly a tax not imposed on white citizens. *Cf. In re Kotta, supra; Fraser* v. *McConway & Torley Co., supra.* The Act is invalid, however, wholly apart from the requirement of an annual fee. The statute imposes severe penalties for failing to register and for failing to display a registration card on proper demand, which are not imposed on white citizens. It is no answer that the state has not required white citizens to register. The requirement that all persons be subject to like "punishments," "pains," and "penalties" cannot be evaded by exempting white citizens from the requirement or prohibition the violation of which is made the subject of a penalty. Under R.S. § 1977, "the rights and responsibilties, civil and criminal" of all persons were intended to be "exactly the same" as those of white citizens. *Virginia* v. *Rives*, 100 U. S. 313, 318.

The provisions of R. S. § 1977 find their origin in Section 1 of the Civil Rights Act of April 9, 1866 (c. 31, 14 Stat. 27), which provided for the

protection of the civil rights of Negroes.[24] The debate on this Act shows plainly that Congress intended thereby to establish equality of "obligations, duties, pains and penalties" of colored and white persons. Cong. Globe, 39th Cong., 1st Sess., pp. 474–475, 1117–1118. Particular reference was made to the necessity of insuring full freedom of movement for Negroes; indeed, specific objection was made to a state statute requiring Negroes to carry passes in order to go from one county to another. Cong. Globe, 39th Cong., 1st Sess., pp. 474–475, 1118, 1160; see Flack, *Adoption of the Fourteenth Amendment*, p. 21. In the light of this legislative history, and of the clear language of R. S. § 1977, we believe it beyond dispute that a state statute providing for the registration of Negroes, and requiring them to carry and, on proper

[24] This Act provided that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

demand, to produce identification cards, and imposing criminal penalties for violation of the statute, would be invalid.

The same conclusion must follow in the case of state statutes, like the Pennsylvania Alien Registration Act, which are directed against aliens. Four years after the enactment of the Civil Rights Act of 1866, referred to above, Congress, by Section 16 of the Civil Rights Act of 1870 (c. 114, 16 Stat. 140, 144), now appearing as R. S. § 1977, extended to all persons within the jurisdiction of the United States the same protection which had previously been conferred on Negroes. The legislative history of the Civil Rights Act of 1870 shows that the change was intended to confer upon aliens the same civil rights which had already been guaranteed to Negroes. Cong. Globe, 41st Cong., 2d Sess., pp. 1536, 3658; Flack, *op. sit., supra,* pp. 219, 221.

It is unnecessary to inquire whether the Pennsylvania statute denies aliens equal protection in violation of the Fourteenth Amendment, apart from R. S. § 1977. The fifth section of this amendment clearly empowers Congress to implement the Constitutional prohibition by defining with more precision the standard of equality embodied in the general language of the amendment. See Note, *The Enabling Clause of the Fourteenth Amendment* (1933) 33 Col. L. Rev. 854, 861–862. This is

the implicit assumption of the cases decided by this Court involving the statute, cited at pages 44–45, *supra*.

Decisions sustaining the power of the states to discriminate against aliens in public employment (*Heim* v. *McCall*, 239 U. S. 175) or in the use of natural resources (*Patsone* v. *Pennsylvania*, 232 U. S. 138) are not opposed. These cases, as we have observed in another connection, are based upon the principle that public property belongs to the citizens of the states alone. There is nothing in the terms of R. S. § 1977 which requires the states to make a gift of such property to others.[25]

The case of *Ohio ex rel. Clarke* v. *Deckebach*, 274 U. S. 392, sustaining a city ordinance requiring a license for the operation of pool rooms and pro-

[25] *Terrace* v. *Thompson*, 263 U. S. 197, upholding state legislation which withheld the right to own land in the state from aliens who had not in good faith declared their intention to become citizens of the United States, is likewise not opposed to our position, since R. S. § 1977 does not apply to this type of law. The Civil Rights Act of April 9, 1866, 14 Stat. 27, protected, together with the rights enumerated in R. S. § 1977, the rights "to inherit, purchase, lease, sell, hold, and convey real and personal property." These words were omitted from Section 16 of the Act of May 31, 1870, 16 Stat. 140, 144 (from which R. S. § 1977 directly derives), and the legislative history makes clear that the omission was deliberate. See statement of Sen. Stewart on S. 365, forerunner of the Act of May 31, 1870, Cong. Globe, 41st Cong., 2d Sess., p. 1536. This difference between the rights of citizens and those of "all persons" has been carried over into R. S. § 1977 (8 U. S. Code, § 41) and R. S. § 1978 (8 U. S. Code, § 42).

hibiting the issuance of a license to aliens, is in principle opposed to our contention. However, R. S. § 1977 was not considered by this Court in the decision of the *Clarke* case or, indeed, in the decision of any of the other cases relied on by appellants.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed.

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NOVEMBER, 1940.

APPENDIX A

The Pennsylvania Alien Registration Act (P. L. 652, June 21, 1939, Purdon's Pa. Stats. Ann., Tit. 35, §§ 1801–1806) provides as follows:

An Act Requiring certain aliens to register with the Department of Labor and Industry and to carry and, upon proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. On or before the first day of January, one thousand nine hundred and forty, and during the month of December, of the year one thousand nine hundred and thirty-nine and of each year thereafter, every alien, eighteen (18) years or over, residing in this Commonwealth, who is not a father or mother of a son or daughter who has served in the service of the United States during any war, or who has not filed an application declaring his or her intention to become an American citizen, or who, having filed such application, shall not have become naturalized within a period of three years thereafter, except such aliens who have resided continuously in the United States since December thirty-first, one thousand nine hundred and eight, and who have never been convicted of any criminal offence in any court of record, shall register with the Department of Labor and Industry, on forms to be prescribed and

furnished by the department; and every such alien becoming a resident of this Commonwealth after the first day of January, one thousand nine hundred and forty, shall, in like manner, register with the department within thirty days after becoming such resident. Such registration shall show the name, age, address, occupation, name of employer, characteristics of appearance, name of wife or husband, if any, of such alien member, names and ages of all children under eighteen (18) residing with him or her, and, if not his or her own, the names of their parents, and such other information and details as the department shall direct.

SECTION 2. For each original registration and for each annual registration thereafter, the person registered shall pay to the department a registration fee of one dollar ($1.00), and shall receive an alien identification card which he or she shall carry at all times and shall exhibit upon demand by any police officer or agent of the Department of Labor and Industry displaying evidence of his authority.

SECTION 3. No motor vehicle shall be registered in the name of any alien, nor shall any license to operate a motor vehicle be issued to any alien except those exempted under the provisions of section one of this act, unless such alien shall exhibit an alien identification card for the current registration period.

SECTION 4. The Department of Labor and Industry shall classify such registrations in such manner as shall best serve the purpose of ready reference, and shall furnish a copy thereof to the Pennsylvania Motor Police. All such records shall be retained for a period of at least three years. The department shall have power to make and enforce

rules and regulations to carry into effect and enforce the provisions of this act.

SECTION 5. Every alien, except those exempted under the provisions of section one of this act, over the age of eighteen (18), who has not declared his or her intention to become an American citizen, and who fails to register as provided in this act within any of the periods required hereby, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than one hundred dollars ($100.00) or to undergo imprisonment for not more than sixty (60) days, or both.

Every alien required to be registered, who shall fail to carry his or her alien identification card or who shall fail or refuse to exhibit the same when properly required to do so, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than ten dollars ($10.00) or to undergo imprisonment for not more than ten (10) days, or both.

SECTION 6. (a) Summary proceedings under this act must be commenced by the filing of information before a justice of the peace, alderman, or a magistrate, which information must be filed in the name of the Commonwealth, and within not less than five days nor more than ten days the magistrate, alderman or justice of the peace shall send by registered mail, to the person charged, at the address of such person, a notice in writing, of the filing of the information, together with a copy thereof, and a notice to appear within ten (10) days of the date of the written notice. If the person named in the information shall not voluntarily appear within ten (10) days of the date of the written notice, a warrant may then be issued

and may be served by a peace officer having authority to serve warrants.

(b) The peace officer, after serving such warrant, shall take the defendant before a magistrate within the municipality in which the defendant is found, who shall take bail either for the defendant's appearance before the magistrate who issued the warrant or for his appearance for trial in the proper court if a summary hearing is waived.

SECTION 7. All acts and parts of acts inconsistent herewith are hereby repealed.

APPENDIX B

Title III of the Alien Registration Act of 1940, Public, No. 670, 76th Cong., 3d Sess., c. 439, provides as follows:

> SEC. 30. No visa shall hereafter be issued to any alien seeking to enter the United States unless said alien has been registered and fingerprinted in duplicate. One copy of the registration and fingerprint record shall be retained by the consul. The second copy shall be attached to the alien's visa and shall be taken up by the examining immigrant inspector at the port of arrival of the alien in the United States and forwarded to the Department of Justice, at Washington, District of Columbia.
>
> Any alien seeking to enter the United States who does not present a visa (except in emergency cases defined by the Secretary of State), a reentry permit, or a border-crossing identification card shall be excluded from admission to the United States.
>
> SEC. 31. (a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 30, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.
>
> (b) It shall be the duty of every parent or legal guardian of any alien now or here-

after in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 30, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.

SEC. 32. Notwithstanding the provisions of sections 30 and 31—

(a) The application for the registration and fingerprinting, or for the registration, of any alien who is in the United States on the effective date of such sections may be made at any time within four months after such date.

(b) No foreign government official, or member of his family, shall be required to be registered or fingerprinted under this title.

(c) The Commissioner is authorized to prescribe, with the approval of the Attorney General, special regulations for the registration and fingerprinting of (1) alien seamen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the United States, (4) aliens under order of deportation, and (5) aliens of any other class not lawfully admitted to the United States for permanent residence.

SEC. 33. (a) All applications for registration and fingerprinting under section 31 shall be made at post offices or such other places as may be designated by the Commissioner.

(b) It shall be the duty of every postmaster, with such assistance as shall be

provided by the Commissioner, to register and fingerprint any applicant for registration and fingerprinting under such section, and for such purposes to designate appropriate space in the local post office for such registration and fingerprinting. Every postmaster shall forward promptly to the Department of Justice, at Washington, District of Columbia, the registration and fingerprint record of every alien registered and fingerprinted by him. The Commissioner may designate such other places for registration and fingerprinting as may be necessary for carrying out the provisions of this Act, and provide for registration and fingerprinting of aliens at such places by officers or employees of the Immigration and Naturalization Service designated by the Commissioner. The duties imposed upon any postmaster under this Act shall also be performed by any employees at the post office of such postmaster who are designated by the postmaster for such purpose.

SEC. 34. (a) The Commissioner is authorized and directed to prepare forms for the registration and fingerprinting of aliens under this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the criminal record, if any, of such alien; and (5) such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General.

(b) All registration and fingerprint records made under the provisions of this title shall be secret and confidential, and shall be made available only to such persons or agen-

cies as may be designated by the Commissioner, with the approval of the Attorney General.

(c) Every person required to apply for the registration of himself or another under this title shall submit under oath the information required for such registration. Any person authorized to register aliens under this title shall be authorized to administer oaths for such purpose.

SEC. 35. Any alien required to be registered under this title who is a resident of the United States shall notify the Commissioner in writing of each change of residence and new address within five days from the date of such change. Any other alien required to be registered under this title shall notify the Commissioner in writing of his address at the expiration of each three months' period of residence in the United States. In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notices required by this section shall be given by such parent or legal guardian.

SEC. 36. (a) Any alien required to apply for registration and to be fingerprinted who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall, upon conviction thereof be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

(b) Any alien, or any parent or legal guardian of any alien, who fails to give written notice to the Commissioner of change of address as required by section

35 of this Act shall, upon conviction thereof, be fined not to exceed $100, or be imprisoned not more than thirty days, or both.

(e) Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall, upon conviction thereof, be fined not to exceed $1,000, or be imprisoned not more than six months, or both; and any alien so convicted within five years after entry into the United States shall, upon the warrant of the Attorney General, be taken into custody, and be deported in the manner provided in sections 19 and 20 of the Immigration Act of February 5, 1917, as amended.

SEC. 37. (a) The Commissioner, with the approval of the Attorney General, is authorized and empowered to make and prescribe, and from time to time to change and amend, such rules and regulations not in conflict with this Act as he may deem necessary and proper in aid of the administration and enforcement of this title (including provisions for the identification of aliens registered under this title); except that all such rules and regulations, insofar as they relate to the performance of functions by consular officers or officers or employees in the Postal Service, shall be prescribed by the Secretary of State and the Postmaster General, respectively, upon recommendation of the Attorney General. The powers conferred upon the Attorney General by this Act and all other powers of the Attorney General relating to the administration of the Immigration and Naturalization Service may be exercised by the Attorney

General through such officers of the Department of Justice, including officers of the Immigration and Naturalization Service, attorneys, special attorneys, and special assistants to the Attorney General, as he may designate specifically for such purposes.

(b) The Commissioner is authorized to make such expenditures, to employ such additional temporary and permanent employees, and to rent such quarters outside the District of Columbia as may be necessary for carrying out the provisions of this title.

SEC. 38 (a) For the purposes of this title—

(1) the term "United States", when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands;

(2) the term "Commissioner" means the Commissioner of Immigration and Naturalization.

(b) The provisions of this title shall take effect upon the date of enactment of this Act; except that sections 30 and 31 shall take effect sixty days after the date of its enactment.

SEC. 39. The President is authorized to provide, by Executive order, for the registration and fingerprinting, in a manner as nearly similar to that provided in this title as he deems practicable, of aliens in the Panama Canal Zone.

APPENDIX C

STATE, COUNTY, AND MUNICIPAL ALIEN REGISTRATION STATUTES AND ORDINANCES, AND RECENT EXECUTIVE ACTION REQUIRING REGISTRATION

Complete information, especially as to recent legislation, is not available, and the following list is not exhaustive. The list has been compiled on the basis of information gathered from the answers to a questionnaire sent to state officials by the Neutrality Unit of the Department of Justice, and from reports in the press.

Alabama: Apparently various cities have recently adopted ordinances providing for the registration of aliens.

Arkansas: The Governor recently called upon aliens to register with state law-enforcement agencies; there is, apparently, no supporting legislation.

California: The Board of Supervisors of Los Angeles County has authorized preparation of an ordinance requiring registration and fingerprinting of aliens in unincorporated county areas.

Connecticut: In 1918, a statute was enacted providing (Gen. Stats. (1930), sec. 6042):

> "When a state of war exists * * * or, in the judgment of the governor, public safety or necessity requires such action, the governor may, by proclamation, direct every subject or citizen of such foreign countries

as the governor may designate in such proclamation, who are in this state * * *" to register. "Every person to whom such proclamation is applicable shall also comply with such rules of personal identification as the governor shall from time to time prescribe."

Florida: In 1917, a statute was enacted (Acts 1917, ch. 7394, Sec. 1; Comp. Gen. Laws (1927) sec. 2078) empowering the governor to require registration of alien subjects of enemy countries or countries with whom a state of war "shall be imminent."

Georgia: The Governor has recently called for registration by aliens; there is, apparently, no state statute on the subject. The City Council of Augusta has recently adopted an ordinance requiring aliens to register with the police department. The city of Atlanta has also recently enacted such an ordinance.

Iowa: During the World War, Iowa adopted a registration statute similar to that of Connecticut (Code (1939) sec. 503).

Louisiana: In 1917, a registration act similar to that of Connecticut was adopted. Acts 1917 (E. S.) No. 20; Gen. Stats. (Dart, 1939), Tit. 3, sec. 282.

A recent proposed bill to require registration of aliens has been approved by the appropriate committees of both houses of the state legislature.

Maine: During the World War, a statute like that of Florida was adopted. Rev. Stats. (1930) ch. 34, sec. 3. Aliens are now being registered, apparently under this act.

Michigan: In 1931, Michigan adopted a comprehensive act (L. 1931, act 241; Stat. Ann. secs. 18.41–18.57) which was declared unconstitutional in *Arrowsmith* v. *Voorhies,* 55 F. (2d) 310 (E. D. Mich.)

Nevada: Aliens are now being registered, but under what authority is not known.

New Jersey: Alien registration bills have been introduced into the state legislature, which has recessed until November.

New Hampshire: In 1917, a statute similar to that of Florida was adopted. Acts 1917, ch. 173; Pub. Laws (1926) ch. 154.

New York: In 1917, a statute similar to that of Connecticut was adopted. L. 1917, ch. 159; Executive Law, sec. 10.

North Carolina: In 1927, a very comprehensive alien registration statute was adopted. Acts 1927, ch. 185; Code (1939) secs. 193 (a)–(h).

Ohio: City Councils in Trumbell County have lately passed ordinances requiring registration and fingerprinting of aliens.

Pennsylvania: In 1939, the statute under consideration was adopted. Pennsylvania Alien Registration Act (P. L. 652, June 21, 1939, Purdon's Pa. Stats. Ann., Tit. 35, §§ 1801–1806).

The City of McKeesport has recently required aliens to register.

South Carolina: A registration statute was adopted in June 1940. Section 9 provides:

> That all aliens and foreign-born residents of South Carolina shall report to the Clerk of the Court of the County in which they reside within thirty (30) days after the approval of this Act, and furnish him with their name, place of residence, age, place of

birth, height, approximate weight, race, color of hair, and eyes, the nature of their business or vocation, if any, and if employed by any person, firm, corporation or society, the name thereof, and the address of the principal office, together with the name and address of the president, or other managing officer thereof. It shall be the duty of the said Clerk to record such names in a book kept for that purpose, in alphabetical order, and on the 1st and 15th day of each month forward a list of such persons to the Governor of the state. Likewise, any alien coming into South Carolina is hereby required within ten (10) days after his arrival, to report and furnish the information above listed to such Clerks of Court. Any person wilfully refusing or failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor and any person failing for ten (10) days to report and give the information herein required, after he has been notified in writing so to do by a Judge of the state or county, any magistrate, sheriff, constable or other peace officer so to do shall be declared to be willfully transgressing the provisions of this section and guilty of a misdemeanor and punishable as provided herein.

Tennessee: Nashville, and apparently other cities and towns, have adopted alien registration ordinances.

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SUPREME COURT OF THE UNITED STATES.

No. 22.—October Term, 1940.

Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants, *vs.* Bernard Davidowitz and Vincenzo Travaglini.	On Appeal from the District Court of the United States for the Middle District of Pennsylvania.

[January 20, 1941.]

Mr. Justice BLACK delivered the opinion of the Court.

This case involves the validity of an Alien Registration Act adopted by the Commonwealth of Pennsylvania.[1] The Act, passed in 1939, requires every alien 18 years or over, with certain exceptions,[2] to register once each year; provide such information as is required by the statute, plus any "other information and details" that the Department of Labor and Industry may direct; pay $1 as an annual registration fee; receive an alien identification card and carry it at all times; show the card whenever it may be demanded by any police officer or any agent of the Department of Labor and Industry; and exhibit the card as a condition precedent to registering a motor vehicle in his name or obtaining a license to operate one. The Department of Labor and Industry is charged with the duties of classifying the registrations for "the purpose of ready reference", and furnishing a copy of the classification to the Pennsylvania

[1] Pa. Stats. Ann. (Purdon, Supp. 1940) tit. 35, §§ 1801-1806.

[2] The exceptions are: aliens who are the "father or mother of a son or daughter who has served in the service of the United States during any war"; aliens who have resided in the United States continuously since December 31, 1906, without acquiring a criminal record; and aliens who have filed their application for citizenship. The latter exception is qualified by the proviso that aliens in that category must still register if they "shall not have become naturalized within a period of three years" after applying for citizenship. Since federal law requires five years residence before citizenship can be acquired (8 U. S. C. § 382), this exception means that aliens may be exempt under the Pennsylvania statute for the first three years after their arrival but subject to the statute for the two years immediately preceding their eligibility for citizenship.

Motor Police. Nonexempt aliens who fail to register are subject to a fine of not more than $100 or imprisonment for not more than 60 days, or both. For failure to carry an identification card or for failure to show it upon proper demand, the punishment is a fine of not more than $10, or imprisonment for not more than 10 days, or both.

A three-judge District Court enjoined enforcement of the Act, holding that it denied aliens equal protection of the laws, and that it encroached upon legislative powers constitutionally vested in the federal government.[3] It is that judgment we are here called upon to review.[4] But in 1940, after the court had held the Pennsylvania Act invalid, Congress enacted a federal Alien Registration Act.[5] We must therefore pass upon the state Act in the light of the Congressional Act.[6]

The federal Act provides for a single registration of aliens 14 years of age and over; detailed information specified by the Act, plus "such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General"; finger-printing of all registrants; and secrecy of the federal files, which can be "made available only to such persons or agencies as may be designated by the Commissioner, with the approval of the Attorney General." No requirement that aliens carry a registration card to be exhibited to police or others is embodied in the law, and only the wilful failure to register is made a criminal offense; punishment is fixed at a fine of not more than $1000, imprisonment for not more than 6 months, or both.

The basic subject of the state and federal laws is identical—registration of aliens as a distinct group. Appellants urge that the

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[3] 30 F. Supp. 470. One alien and one naturalized citizen joined in proceedings filed against certain state officials to enjoin enforcement of the Act. The answer of the defendants admitted the material allegations of the petition and defended the Act on the ground that it was within the power of the state. Plaintiffs moved for judgment on the pleadings under Rule 12(c). The requested relief was denied as to the naturalized citizen but granted as to the alien.

[4] The case is here on appeal under section 266 of the Judicial Code, as amended (28 U. S. C. § 380). We noted probable jurisdiction on March 25, 1940.

[5] Public Act No. 670, 76th Cong., 3d Sess., c. 439.

[6] Cf. Vandenbark v. Owens-Illinois Glass Co., No. 141 this term, decided January 6, 1941. And see United States v. Schooner Peggy, 1 Cranch 103, 110, and Carpenter v. Wabash Ry., 309 U. S. 23, 26-27.

Pennsylvania law "was constitutional when passed", and that "The only question is whether the state act is in abeyance or whether the state and Federal Government have concurrent jurisdiction to register aliens for the protection of inhabitants and property." Appellees, on the other hand, contend that the Pennsylvania Act is invalid, for the reasons that it (1) denies equal protection of the laws to aliens residing in the state; (2) violates section 16 of the Civil Rights Act of 1870;[7] (3) exceeds Pennsylvania's constitutional power in requiring registration of aliens without Congressional consent. Appellees' final contention is that the power to restrict, limit, regulate and register aliens as a distinct group is not an equal and continuously existing concurrent power of state and nation, but that even if the state can legislate on this subject at all, its power is subordinate to supreme national law. Appellees conclude that by its adoption of a comprehensive, integrated scheme for regulation of aliens—including its 1940 registration act—Congress has precluded state action like that taken by Pennsylvania.[8]

In the view we take it is not necessary to pass upon appellees' first, second, and third contentions, and so we pass immediately to their final question, expressly leaving open all of appellees' other contentions, including the argument that the federal power in this field, whether exercised or unexercised, is exclusive. Obviously the answer to appellees' final question depends upon an analysis of the respective powers of state and national

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[7] 16 Stat. 140, 144, 8 U. S. C. § 41: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

[8] Pennsylvania is not alone among the states in attempting to compel alien registration. Several states still have dormant on their statute books laws passed in 1917-18, empowering the governor to require registration when a state of war exists or when public necessity requires such a step. E. g., Conn. Gen. Stats. (1930) tit. 59, § 6042; Fla. Comp. Gen. Laws (1927) § 2078; Iowa Code (1939) § 503; La. Gen. Stats. (Dart, 1939) tit. 3, § 282; Me. Rev. Stats. (1930) ch. 34, § 3; N. H. Pub. Laws (1926) ch. 154; N. Y. Cons. Laws (Executive Law) § 10. Other states, like Pennsylvania, have passed registration laws more recently. E. g., S. C. Acts (1940) No. 1014, § 9, p. 1939; N. C. Code (1939) §§ 193 (a)-(h). In several states, municipalities have recently undertaken local alien registration.

Registration statutes of Michigan and California were held unconstitutional in Arrowsmith *v.* Voorhies, 55 F. (2d) 310, and Ex parte Ah Cue, 101 Cal. 197, 35 Pac. 556.

governments in the regulation of aliens as such, and a determination of whether Congress has, by its action, foreclosed enforcement of Pennsylvania's registration law.

First. That the supremacy of the national power in the general field of foreign affairs, including power over immigration, naturalization and deportation, is made clear by the Constitution, was pointed out by the authors of The Federalist in 1787,[9] and has since been given continuous recognition by this Court.[10] When the national government by treaty or statute has established rules and regulations touching the rights, privileges, obligations or burdens of aliens as such, the treaty or statute is the supreme law of the land. No state can add to or take from the force and effect of such treaty or statute, for Article VI of the Constitution provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties. "For local interests the several States of the Union exist; but for international purposes, embracing our relations with foreign nations, we are but one people, one nation, one power."[11] Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local in-

[9] The importance of national power in all matters relating to foreign affairs and the inherent danger of state action in this field are clearly developed in Federalist papers No. 3, 4, 5, 42 and 80.

[10] E. g., Henderson v. Mayor of New York, 92 U. S. 259; People v. Compagnie Generale Transatlantique, 107 U. S. 59; Fong Yue Ting v. United States, 149 U. S. 698, 711. Cf. Z. & F. Assets Realization Corp. v. Hull, No. 381 this term, decided January 6, 1941.

[11] The Chinese Exclusion Cases, 130 U. S. 581, 606. Thomas Jefferson, who was not generally favorable to broad federal powers, expressed a similar view in 1787: "My own general idea was, that the States should severally preserve their sovereignty in whatever concerns themselves alone, and that whatever may concern another State, or any foreign nation, should be made a part of the federal sovereignty." Memoir, Correspondence and Miscellanies from the Papers of Thomas Jefferson (1829), vol. 2, p. 230, letter to Mr. Wythe. Cf. James

terference. As Mr. Justice Miller well observed of a California statute burdening immigration: "If [the United States] should get into a difficulty which would lead to war, or to suspension of intercourse, would California alone suffer, or all the Union?"[12]

One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of government, has to do with the protection of the just rights of a country's own nationals when those nationals are in another country. Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government.[13] This country, like other nations, has entered into numerous treaties of amity and commerce since its inception—treaties entered into under express constitutional authority, and binding upon the states as well as the nation. Among these treaties have been many which not only promised and guaranteed broad rights and privileges to aliens sojourning in our own territory, but secured reciprocal promises and guarantees for our own citizens while in other lands. And apart from treaty obligations, there has grown up in the field of international relations a body of customs defining with more or less certainty the duties owing by all nations to alien residents—duties which our State Department has often success-

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Madison in Federalist paper No. 42: "'The *second* class of powers, lodged in the general government, consist of those which regulate the intercourse with foreign nations. . . . This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to other nations.'"

[12] Chy Lung *v.* Freeman, 92 U. S. 275, 279. Cf. Alexander Hamilton in Federalist paper No. 80: "The peace of the *whole* ought not to be left at the disposal of a *part*. The Union will undoubtedly be answerable to foreign powers for the conduct of its members." That the Congress was not unaware of the possible international repercussions of registration legislation is apparent from a study of the history of the 1940 federal Act. Congressman Coffee, speaking against an earlier version of the bill, said: "Are we not guilty of deliberately insulting nations with whom we maintain friendly diplomatic relations? Are we not humiliating their nationals? Are we not violating the traditions and experiences of a century and a half?" 84 Cong. Rec. 9536.

[13] For a collection of typical international controversies that have arisen in this manner, see Dunn, The Protection of Nationals (1932), pp. 13 *et seq.* Cf. John Jay in Federalist paper No. 3: "The number of wars which have happened or will happen in the world will always be found to be in proportion to the number and weight of the causes, whether *real* or *pretended*, which *provoke* or *invite* them. If this remark be just, it becomes useful to inquire whether so many just causes of war are likely to be given by *United America* as by *disunited* America; for if it should turn out that United America will probably give the fewest, then it will follow that in this respect the Union tends most to preserve the people in a state of peace with other nations."

fully insisted foreign nations must recognize as to our nationals abroad.[14] In general, both treaties and international practices have been aimed at preventing injurious discriminations against aliens. Concerning such treaties, this Court has said: "While treaties, in safeguarding important rights in the interest of reciprocal beneficial relations, may by their express terms afford a measure of protection to aliens which citizens of one or both of the parties may not be able to demand against their own government, the general purpose of treaties of amity and commerce is to avoid injurious discrimination in either country against the citizens of the other."[15]

Legal imposition of distinct, unusual and extraordinary burdens and obligations upon aliens—such as subjecting them alone, though perfectly law-abiding, to indiscriminate and repeated interception and interrogation by public officials—thus bears an inseparable relationship to the welfare and tranquillity of all the states, and not merely to the welfare and tranquillity of one. Laws imposing such burdens are not mere census requirements, and even though they may be immediately associated with the accomplishment of a local purpose, they provoke questions in the field of international affairs. And specialized regulation of the conduct of an alien before naturalization is a matter which Congress must consider in discharging its constitutional duty "To establish an Uniform Rule of Naturalization . . . . ." It cannot be doubted that both the state and the federal registration laws belong "to that class of laws which concern the exterior relation of this whole nation with other nations and governments."[16] Consequently the regulation of aliens is so intimately blended and intertwined with responsibilities of the national government that where it acts, and the state also acts on the same subject, "the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not con-

[14] "In consequence of the right of protection over its subjects abroad which every State enjoys, and the corresponding duty of every State to treat aliens on its territory with a certain consideration, an alien . . . must be afforded protection for his person and property. . . . Every State is by the Law of Nations compelled to grant to aliens at least equality before the law with its citizens, as far as safety of person and property is concerned. An alien must in particular not be wronged in person or property by the officials and courts of a State. Thus the police must not arrest him without just cause. . . ." 1 Oppenheim, International Law (5th ed., 1937), pp. 547-548. And see 4 Moore, International Law Digest, pp. 2, 27, 28; Borchard, The Diplomatic Protection of Citizens Abroad (1928), pp. 25, 37, 73, 104.

[15] Todok v. Union State Bank, 281 U. S. 449, 454-455.

[16] Henderson v. Mayor of New York, 92 U. S. 259, 273.

troverted, must yield to it."[17] And where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.[18] There is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference.[19] But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[20] And in that determination, it is of importance

[17] Gibbons *v.* Ogden, 9 Wheat. 1, 211; see Charleston and Western Carolina Railway Co. *v.* Varnville Furniture Co., 237 U. S. 597. Cf. People *v.* Compagnie Generale Transatlantique, 107 U. S. 59, 63, where the court, speaking of a state law and a federal law dealing with the same type of control over aliens, said that the federal law "covers the same ground as the New York statute, and they cannot co-exist."

[18] Cf. Nielsen *v.* Johnson, 279 U. S. 47; Asakura *v.* Seattle, 265 U. S. 332; International Shoe Co. *v.* Pinkus, 278 U. S. 261, 265, and cases there cited. And see Savage *v.* Jones, 225 U. S. 501, 539. Appellant relies on Gilbert *v.* Minnesota, 254 U. S. 325, and Halter *v.* Nebraska, 205 U. S. 34, but neither of those cases is relevant to the issues here presented.

[19] E. g., Hauenstein *v.* Lynham, 100 U. S. 483, 489; Geofroy *v.* Riggs, 133 U. S. 258, 267; Asakura *v.* Seattle, 265 U. S. 332, 340, 342; Nielsen *v.* Johnson, 279 U. S. 47, 52; Todok *v.* Union State Bank, 281 U. S. 449, 454; Santovincenzo *v.* Egan, 284 U. S. 30, 40; United States *v.* Belmont, 301 U. S. 324, 331 (but compare the affirmance by an equally divided Court in United States *v.* Moscow Fire Ins. Co., 309 U. S. 624); Kelly *v.* Washington, 302 U. S. 1, 10, 11; Marrer *v.* Hamilton, 309 U. S. 598, 604; Bacardi Corporation *v.* Domenech, No. 21 this term, decided December 9, 1940, 85 L. Ed. 179, 183, 188.

[20] Cf. Savage *v.* Jones, 225 U. S. 501, 533: "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."

that this legislation is in a field which affects international relations, the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority. Any concurrent state power that may exist is restricted to the narrowest of limits; the state's power here is not bottomed on the same broad base as is its power to tax.[21] And it is also of importance that this legislation deals with the rights, liberties, and personal freedoms of human beings, and is in an entirely different category from state tax statutes or state pure food laws regulating the labels on cans.[22]

Our conclusion is that appellee is correct in his contention that the power to restrict, limit, regulate, and register aliens as a distinct group is not an equal and continuously existing concurrent power of state and nation, but that whatever power a state may have is subordinate to supreme national law.[23] We proceed therefore to an examination of Congressional enactments to ascertain whether or not Congress has acted in such manner that its action should preclude enforcement of Pennsylvania's law.

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[21] Express recognition of the breadth of the concurrent taxing powers of state and nation is found in Federalist paper No. 32.

[22] It is true that where the Constitution does not of itself prohibit state action, as in matters related to interstate commerce, and where the Congress, while regulating related matters, has purposely left untouched a distinctive part of a subject which is peculiarly adapted to local regulation, the state may legislate concerning such local matters which Congress could have covered but did not. Kelly *v.* Washington, 302 U. S. 1, 9, 10, 11, 12, 13, 14 (inspection for seaworthiness of hull and machinery of motor-driven tugs). And see Reid *v.* Colorado, 187 U. S. 137, 147 (prohibition on introduction of diseased cattle or horses); Savage *v.* Jones, 225 U. S. 501, 529, 532 (requirement that certain labels reveal package contents); Carey *v.* South Dakota, 250 U. S. 118, 121 (prohibition of shipment by carrier of wild ducks); Dickson *v.* Uhlmann Grain Co., 288 U. S. 188, 199 (prohibition of margin transactions in grain where there is no intent to deliver); Mintz *v.* Baldwin, 289 U. S. 346, 350-352 (inspection of cattle for infectious diseases); Maurer *v.* Hamilton, 309 U. S. 598, 604, 614 (prohibition of car-over-cab trucking).

[23] As supporting the contention that the state can enforce its alien registration legislation, even though Congress has acted on the identical subject, appellant relies upon a number of previous opinions of this Court. Ohio ex rel. Clarke *v.* Deckebach, 274 U. S. 392, 395, 396; Frick *v.* Webb, 263 U. S. 326, 333; Webb *v.* O'Brien, 263 U. S. 313, 321, 322; Terrace *v.* Thompson, 263 U. S. 197, 223, 224; Heim *v.* McCall, 239 U. S. 175, 193, 194. In each of those cases this Court sustained state legislation which applied to aliens only, against an attack on the ground that the laws violated the equal protection clause of the Constitution. In each case, however, the Court was careful to point out that the state law was not in violation of any valid treaties adopted by the United States, and in no instance did it appear that Congress had passed legislation on the subject. In the only case of this type in which there was an outstanding treaty provision in conflict with the state law, this Court held the state law invalid. Asakura *v.* Seattle, 265 U. S. 332.

Second. For many years Congress has provided a broad and comprehensive plan describing the terms and conditions upon which aliens may enter this country, how they may acquire citizenship, and the manner in which they may be deported. Numerous treaties, in return for reciprocal promises from other governments, have pledged the solemn obligation of this nation to the end that aliens residing in our territory shall not be singled out for the imposition of discriminatory burdens. Our Constitution and our Civil Rights Act have guaranteed to aliens "the equal protection of the laws [which] is a pledge of the protection of equal laws."[24] With a view to limiting prospective residents from foreign lands to those possessing the qualities deemed essential to good and useful citizenship in America, carefully defined qualifications are required to be met before aliens may enter our country. These qualifications include rigid requirements as to health, education, integrity, character, and adaptability to our institutions. Nor is the alien left free from the application of federal laws after entry and before naturalization. If during the time he is residing here he should be found guilty of conduct contrary to the rules and regulations laid down by Congress, he can be deported. At the time he enters the country, at the time he applies for permission to acquire the full status of citizenship, and during the intervening years, he can be subjected to searching investigations as to conduct and suitability for citizenship.[25] And in 1940 Congress added to this comprehensive scheme a complete system for alien registration.

The nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by the law, are all important in considering the question of whether supreme federal enactments preclude enforcement of state laws on the same subject.[26] Opposition to laws permitting invasion of the personal liberties of law-abiding individuals, or singling out aliens as particularly dangerous and undesirable groups, is deep-seated in this country. Hostility to such legislation in America stems back to our colonial history,[27] and champions of freedom for the individual have always vigorously opposed burdensome registration systems.

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[24] Yick Wo v. Hopkins, 118 U. S. 356, 369.

[25] 8 U. S. C. §§ 152, 373, 377(c), 382, 398, 399(a).

[26] Cf. Prigg v. Pennsylvania, 16 Pet. 539, 622, 623.

[27] As early as 1641, in the Massachusetts "Body of Liberties", we find the statement that "Every person within this Jurisdiction, whether Inhabitant or forreiner, shall enjoy the same justice and law that is generall for the plantation . . ."

The drastic requirements of the alien Acts of 1798[28] brought about a political upheaval in this country the repercussions from which have not even yet wholly subsided.[29] So violent was the reaction to the 1798 laws that almost a century elapsed before a second registration act was passed. This second law, which required Chinese to register and carry identification cards with them at all times, was enacted May 5, 1892. An opponent of this legislation, speaking in the Senate of the requirement that cards be carried, said: "[The Chinese covered by the Act] are here ticket-of-leave men; precisely as, under the Australian law, a convict is allowed to go at large upon a ticket-of-leave, these people are to be allowed to go at large and earn their livelihood, but they must have their tickets-of-leave in their possession. . . . This inaugurates in our system of government a new departure; one, I believe never before practised, although it was suggested in conference that some such rules had been adopted in slavery times to secure the peace of society."[30]

For many years bills have been regularly presented to every Congress providing for registration of aliens. Some of these bills proposed annual registration of aliens, issuance of identification cards containing information about and a photograph of the bearer, exhibition of the cards on demand, payment of an annual fee, and kindred requirements.[31] Opposition to these bills was based upon charges that their requirements were at war with the fundamental principles of our free government, in that they would bring about unnecessary and irritating restrictions upon personal liberties of the individual, and would subject aliens to a system of indiscriminate questioning similar to the espionage systems existing in other lands.[32]

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[28] 1 Stat. 570, 577.

[29] See Field, J., dissenting in Fong Yue Ting v. United States, 149 U. S. 698, 746-750. Cf. 84 Cong. Rec. 9534.

[30] Quoted in Fong Yue Ting v. United States, *supra*, 743.

[31] E.g., H. R. 9101 and H. R. 9147, 71st Cong., 2nd Session; see 72 Cong. Rec. 3886.

[32] The requirement that cards be carried and exhibited has always been regarded as one of the most objectionable features of proposed registration systems, for it is thought to be a feature that best lends itself to tyranny and intimidation. Congressman Celler, speaking in 1928 of the repeated defeat of registration bills and of an attempt by the Secretary of Labor to require registration of incoming aliens by executive order, said: "But here is the real vice of the situation and the core of the difficulty: 'The admitted alien,' as the order states, 'should be cautioned to present [his card] for inspection if and when subsequently requested so to do by an officer of the Immigration Service.'" 70 Cong. Rec. 190.

When Congress passed the Alien Registration Act of 1940, many of the provisions which had been so severely criticized were not included.[33] The Congressional purpose, as announced by the chairman of the Senate sub-committee which drafted the final bill, was to "work . . . the new provisions into the existing [immigration and naturalization] laws, so as to make a harmonious whole."[34] That "harmonious whole" included the "Uniform Rule of Naturalization" the Constitution empowered the Congress to provide.[35] And as a part of that "harmonious whole", under the federal Act aliens need not carry cards, and can only be punished for wilful failure to register.[36] Further, registration records and finger-prints must be kept secret and cannot be revealed except to agencies—such as a state—upon consent of the Commissioner and the Attorney General.

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[33] Congressman Smith, who introduced the original of the bill that as finally adopted became the 1940 Act, said in Committee: "The drafting of the bill is . . . a codification of measures that have been offered from time to time. . . . I have tried to eliminate from the bills that have been offered o the subject those which seemed to me would cause much controversy." Hearings before Subcommittee No. 3 of the House Judiciary Committee, H. R. 5138, April 12, 1939, p. 71.

[34] Cong. Rec., June 15, 1940, p. 12620. Senator Connally made this statement in explaining why it had been found necessary to substitute a new bill for the bill originally sent to the Senate by the House. In detailing the care that had been taken in the drafting of the new measure, he said: "We regretted very much that we had to discard entirely the bill passed by the House and substitute a new bill after the enacting clause. However, we called in Mr. Murphy, of the Drafting Service, who worked with us some 2 weeks every day . . . . We called on the Department of Justice, and had the Solicitor General with us. We called in the Commissioner of Immigration and Naturalization, and together we went over all the existing laws, and worked the new provisions into the existing laws, so as to make a harmonious whole." This Senate version was substantially the Act as finally adopted; the alien registration provisions are title III of a broader Act dealing with deportable offenses and advocacy of disloyalty in the armed forces.

[35] In Federalist paper No. 42, the reasons for giving this power to the federal government are thus explained: "By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with the privilege of residence. What would have been the consequence, if such persons, by residence or otherwise, had acquired the character of citizens under the laws of another State . . . ? Whatever the legal consequences might have been, other consequences would probably have resulted of too serious a nature not to be provided against. The new Constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the Confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States."

[36] That the Congressional decision to punish only wilful transgressions was deliberate rather than inadvertent is conclusively demonstrated by the debates on the bill. E. g., Cong. Rec., June 15, 1940, p. 12621. And see note 37, *infra*.

We have already adverted to the conditions which make the treatment of aliens, in whatever state they may be located, a matter of national moment. And whether or not registration of aliens is of such a nature that the Constitution permits only of one uniform national system, it cannot be denied that the Congress might validly conclude that such uniformity is desirable. The legislative history of the Act indicates that Congress was trying to steer a middle path, realizing that any registration requirement was a departure from our traditional policy of not treating aliens as a thing apart, but also feeling that the Nation was in need of the type of information to be secured.[37] Having the constitutional authority so to do, it has provided a standard for alien registration in a single integrated and all-embracing system in order to obtain the information deemed to be desirable in connection with aliens. When it made this addition to its uniform naturalization and immigration laws, it plainly manifested a purpose to do so in such a way as to protect the personal liberties of law-abiding aliens through one uniform national registration system, and to leave them free from the possibility of inquistorial practices and police surveillance that might not only affect our international relations but might also generate the very disloyalty which the law has intended guarding against. Under these circumstances, the Pennsylvania Act cannot be enforced. Accordingly, the judgment below is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[37] Congressman Celler, ranking member of the House Judiciary Committee which reported out the bill, said in stating his intention of voting for the 1940 Act: "Mr. Speaker, judging the temper of the Nation, I believe this compromise report is the best to be had under the circumstances and I shall vote for it . . . Furthermore, I think the conferees have done a good job because the punishment is not too great . . . There must be proof . . . that the alien wilfully refuses to register . . . I drew the minority report against this bill originally, because it provided some very harsh provisions against aliens. Some of the harshness and some of the severity of the original bill have been eliminated . . . I must admit that it is the best to be had under the circumstances." Cong. Rec., June 22, 1940, pp. 13468-9.

SUPREME COURT OF THE UNITED STATES.

No. 22.—October Term, 1940.

Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants, vs. Bernard Davidowitz and Vincenzo Travaglini. | Appeal from the District Court of the United States for the Middle District of Pennsylvania.

[January 20, 1941.]

Mr. Justice Stone.

I think the judgment below should be reversed.

Undoubtedly Congress, in the exercise of its power to legislate in aid of powers granted by the Constitution to the national government may greatly enlarge the exercise of federal authority and to an extent which need not now be defined, it may, if such is its will, thus subtract from the powers which might otherwise be exercised by the states. Assuming, as the Court holds, that Congress could constitutionally set up an exclusive registration system for aliens, I think it has not done so and that it is not the province of the courts to do that which Congress has failed to do.

At a time when the exercise of the federal power is being rapidly expanded though Congressional action, it is difficult to overstate the importance of safeguarding against such diminution of state power by vague inferences as to what Congress might have intended if it had considered the matter or by reference to our own conceptions of a policy which Congress has not expressed and which is not plainly to be inferred from the legislation which it has enacted. Cf. *Graves* v. *O'Keefe*, 306 U. S. 466, 479, 480, 487. The Judiciary of the United States should not assume to strike down a state law which is immediately concerned with the social order and safety of its people unless the statute plainly and palpably violates some right granted or secured to the national government by the Constitution or similarly encroaches upon the exercise of some authority delegated to the United States for the attainment of objects of national concern.

The opinion of the Court does not deny, and I see no reason to doubt that the Pennsylvania registration statute, when passed, was a lawful exercise of the constitutional power of the state. With exceptions not now material it requires aliens resident in the state, who have not declared their intention to become citizens, to register annually, to pay a registration fee of $1.00, and to carry a registration identification card. It affords to the state a convenient method of ascertaining the number and whereabouts of aliens within the state, which it is entitled to know, and a means of their identification. It is an available aid in the enforcement of a number of statutes of the state applicable to aliens whose constitutional validity has not been questioned, one of which has been held by this Court not to infringe the Fourteenth Amendment. *Patsone* v. *Pennsylvania*, 232 U. S. 138.[1]

The national government has exclusive control over the admission of aliens into the United States but, but after entry, an alien resident within a state, like a citizen, is subject to the police powers of the state and, in the exercise of that power, state legislatures may pass laws applicable exclusively to aliens so long as the distinction taken between aliens and citizens is not shown to be without rational basis. *Patsone* v. *Pennsylvania, supra; Terrace* v. *Thompson*, 263 U. S. 197; *Cockrill* v. *California*, 268 U. S. 258; *Ohio* v. *Deckebach*, 274 U. S. 392, 396, and cases cited. The federal government has no general police power over aliens and, so far as it can exercise any control over them, it must be in the pursuance of a power granted to it by the Constitution.

The opinion of the Court does not support its conclusion upon the ground that in the absence of federal legislation on the subject there is any want of power in the state to pass the present statute. It does not suggest nor could it well do so that in the absence of Congressional action the Pennsylvania statute either by its own terms or in its operation interferes with or obstructs the authority con-

[1] Tit. 34 § 1311.1001, Purdon's Penn. Stat. Ann., prohibiting hunting by aliens, was sustained in the Patsone case, 232 U. S. 138. Cf. Tit. 30 § 240. Other Pennsylvania statutes whose validity have not been passed upon regulate the activities of aliens: Tit. 63, setting forth license requirements for the practice of certain professions and occupations, make special requirements for aliens seeking to practice as certified public accountants (§ 1), architects (§ 22), engineers (§ 137), nurses (§ 202), physicians and surgeons (§ 406), and undertakers (§ 478a). The real property holdings of aliens are limited to 5000 acres of land or land producing net income of $20,000 or less (Title 68, §§ 28, 32). Taxes are to be deducted from the wages of aliens by their employers when the tax collector requests (Tit. 72, § 5681).

ferred by the Constitution on the national government over the national defense, the conduct of foreign relations, its powers over immigration and deportation of aliens or their naturalization. The existence of the national power to conduct foreign relations and negotiate treaties does not foreclose state legislation dealing exclusively with aliens as such. This Court has consistently held that treaties of the United States for the protection of resident aliens do not supercede such legislation unless they conflict with it. See *Ohio* v. *Deckebach, supra*, 395 and cases cited; *Todok* v. *Union State Bank*, 281 U. S. 449, 454 *et seq.*; cf. *Nielson* v. *Johnson*, 279 U. S. 47. It is not contended that the Pennsylvania statute conflicts with any term of any treaty.

The question presented here is a different one from that considered in *Henderson, et al.* v. *Mayor of New York, et al.*, 92 U. S. 259, 273, where the state taxation and registration of all persons entering the United States through a port of the state was held to be a regulation of foreign commerce forbidden to the states by the Constitution, even though Congress had passed no similar legislation. The registration of aliens resident in a state is not a regulation of interstate or foreign commerce or of the entry or deportation of aliens and would seem to be no more an exercise of any power granted to the national government or an encroachment upon it than is a state census for local purposes an infringement of the national authority to take a national census for national purposes. It is the federal act alone which is pointed to as curtailing or withdrawing the reserved power of the state over its alien population.

Title I of the federal statute penalizes certain acts of any persons intended to interfere with, impair or influence the loyalty, morale or discipline of the military or naval forces of the United States. Title II, among other things, provides for the deportation of aliens after conviction and service of sentence for violations of the provisions of Title I. And the evident purpose of the registration provisions of Title III is to aid in the enforcement of the other provisions of the Act and in the prevention of subversive activities of aliens resident within the United States. It requires the registration and fingerprinting of all aliens over fourteen years of age, with exceptions not now material, who are not registered and fingerprinted upon entering the country. Registered aliens resident in the United States are required to notify the Commissioner of Immigration of any change of residence and penalties are imposed for wilful non-compliance.

As construed and applied by the opinion of the Court the federal act denies to the states the practicable means of identifying their alien residents and of recording their whereabouts and it withholds from the states the benefit of the information secured under the federal act except insofar as it may be made available to them on application to the Attorney General.

It is conceded that the federal act in operation does not at any point conflict with the state statute, and it does not by its terms purport to control or restrict state authority in any particular. But the government says that Congress by passing the federal act, has "occupied the field" so as to preclude the enforcement of the state statute and that the administration of the latter might well conflict with Congressional policy to protect the civil liberty of aliens against the harassments of intrusive police surveillance.

Little aid can be derived from the vague and illusory but often repeated formula that Congress "by occupying the field" has excluded from it all state legislation. Every Act of Congress occupies some field, but we must know the boundaries of that field before we can say that it has precluded a state from the exercise of any power reserved to it by the Constitution. To discover the boundaries we look to the federal statute itself, read in the light of its constitutional setting and its legislative history.

Federal statutes passed in aid of a granted power obviously supersede state statutes with which they conflict. *Pennsylvania R. Co.* v. *Illinois Brick Co.*, 297 U. S. 447, 459. See *Kelly* v. *Washington*, 302 U. S. 1, 10. But we are pointed to no such conflict here. In the exercise of such powers Congress also has wide scope for prohibiting state regulation of matters which Congress may, but has not undertaken to regulate itself. But no words of the statute or of any committee report, or any Congressional debate indicate that Congress intended to withdraw from the state any part of their constitutional power over aliens within their borders. We must take it that Congress was not unaware that some nineteen states have statutes or ordinances requiring some form of registration for aliens, seven of them dating from the last war. The repeal of this legislation is not to be inferred from the silence of Congress in enacting a law which at no point conflicts with the state legislation and is harmonious with it.

The exercise of the federal legislative power is certainly not more potent to curtail the exercise of state power over aliens than is the

exercise of the treaty making power. Yet as we have seen no treaty has that effect unless it conflicts with a state statute. The passage of the National Pure Food & Drug Act did not preclude the states from supplementing it by like additional requirements not conflicting with those of the Congressional act. *Savage v. Jones*, 225 U. S. 503. The enactment of federal laws for the inspection, as a safety measure, of vessels plying navigable waters of the United States does not foreclose the states from like inspection of the hull and machinery of such vessels within the state, to insure safety and determine seaworthiness, demands which lie outside the federal requirements. *Kelly* v. *Washington, supra.* The passage of the National Draft and the National Espionage Acts with their penalties for violation, did not preclude a state from making it a misdemeanor for any person to advocate that citizens of the state refuse to aid or assist the United States in carrying on a war. *Gilbert* v. *Minnesota*, 254 U. S. 325; cf. *Halter* v. *Nebraska*, 204 U. S. 34; see also *Reid* v. *Colorado*, 187 U. S. 137; *Carey* v. *South Dakota*, 250 U. S. 118; *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188; *Mintz* v. *Baldwin*, 289 U. S. 346; *Maurer* v. *Hamilton*, 309 U. S. 598, 614. These are but a few of the many examples of the long established principle of constitutional interpretation that an exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be fairly reconciled or consistently stand together". *Sinnot* v. *Davenport*, 22 How. 227, 243; *Kelly* v. *Washington, supra*, 10. A federal registration act designed to aid in enforcing federal statutes and to prevent subversive activities against the national government can stand consistently with a like statute applicable to residents passed in aid of state laws and as a safeguard to property and persons within the state, as readily as the federal and state laws which annually demand two separate income tax returns of the citizen.

The Fourteenth Amendment guarantees the civil liberties of aliens as well as of citizens against infringement by state action in the enactment of laws and their administration as well. Again we are pointed to nothing in the Federal Alien Registration Act or in the records of its passage through Congress to indicate that Congress thought those guarantees inadequate or that in requiring registration of all aliens it undertook to prevent the states from passing

any registration measure otherwise constitutional. True, it was careful to bring the new legislation into harmony with existing federal statutes and to avoid, so far as consistent with its purposes, any harsh or oppressive requirements, but in all this there is to be found no warrant for saying that there was a Congressional purpose to curtail the exercise of any constitutional power of the state over its alien residents or to protect the alien from state action which the Constitution prohibits and which the federal courts stand ready to prevent. See *Hague* v. *C. I. O.*, 307 U. S. 496, 518, 525 *et seq.*

Here compliance with the state law does not preclude or even interfere with compliance with the act of Congress. The enforcement of both acts involves no more inconsistency, no more inconvenience to the individual, and no more embarrassment to either government than do any of the laws, state and national, such as revenue laws, licensing laws, or police regulations, where interstate commerce is involved, which are equally applied to the citizen because he is subject, as are aliens, to a dual sovereignty.

The CHIEF Justice and Mr. Justice MCREYNOLDS concur in this opinion.